

IN THE MATTER OF
THE APPLICATION OF
JAMES WEIMER, ET UX
FOR ZONING VARIANCE ON PROPERTY
LOCATED ON THE NORTH SIDE
BEACHWOOD ROAD, 1400' WEST OF THE
CENTERLINE OF LYNHURST ROAD
(4116 BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
(RONDALYN RAKOWSKI - PLAINTIFF)
ZONING CASE NO. 92-187-A

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* Civil Action
* No. 92-CV-10821/38/132

AMENDED ORDER PURSUANT TO ORDER OF THE
CIRCUIT COURT FOR BALTIMORE COUNTY

This matter comes before the Board on remand by Order of the
Circuit Court for Baltimore County dated September 28, 1994 with
direction that the Petition for Variance be denied, pursuant to
Order by the Court of Special Appeals dated May 24, 1994.

IT IS THEREFORE this 13th day of October, 1994, by
the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance in Zoning Case No. 92-
187-A be and is hereby DENIED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Judson H. Lipowitz, Acting Chairman

Harry E. Buchheister, Jr.



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

October 13, 1994

Thomas J. Giarzi, Esquire
901 Dulaney Valley Road, Suite 400
Towson, MD 21204

RE: Case No. 92-187-A
Circuit Court Civil Action
No. 92-CV-10821 /38 /132
James W. Weimer, et ux

Dear Mr. Giarzi:

Enclosed please find a copy of the Amended Order issued this
date by the County Board of Appeals of Baltimore County upon remand
from the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

encl

cc: Ms. Rondalyn Rakowski
Mr. & Mrs. James W. Weimer
Honorable Thomas J. Bollinger
Copy /Circuit Ct File 92-CV-10821
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Printed with Soy-based Ink
on Recycled Paper

92-187-A James W. Weimer, et ux
SA REVERSED, REMANDED back to
CCT for REMAND to the BOA
with direction that the
Petition for Variance be DENIED.
5/24/91 (Bishop, Fischer, Getty)

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1543

September Term, 1993

RONDALYN RAKOWSKI

v.

JAMES W. WEIMER, et al.

Bishop,
Fischer,
Getty, James S. (Ret'd,
Specially Assigned)

JJ.

Per Curiam

Filed: May 24, 1994

Appellant, Rondalyn Rakowski ("Rakowski"), filed a complaint
with the Office of Zoning Administration and Development Management
alleging that appellee, James W. Weimer ("Weimer"), was
constructing an accessory building in violation of the Baltimore
County Zoning Regulations ("BCZR"). Weimer filed a petition for a
variance, which the Deputy Zoning Commissioner ("Commissioner")
granted. Rakowski filed an appeal to the County Board of Appeals
("the Board"), which affirmed the Commissioner's decision to grant
Weimer's request for a variance. Rakowski then filed an appeal to
the Circuit Court for Baltimore County, which also affirmed the
Commissioner's decision. Finally, Rakowski filed a timely notice
of appeal to this Court.

Issues

Rakowski raises four issues, which we rephrase as follows:

- I. Does the BCZR permit a variance for an
accessory building in a front yard?
- II. Did the Board of Appeals make adequate
findings of fact to support its decision?
- III. Did Weimer meet his burden of proof to
justify the Commissioner's decision to grant
the variance?
- IV. Does the variance violate the minimum
set-back requirement for an accessory
building?

Facts

In September 1991, Weimer removed an old screen house located
in his front yard and began constructing a new screen house on the
same site. The screen house site is classified as a Limited
Development Area on Back River, located within the Chesapeake Bay
Critical Area. Weimer did not obtain a permit from the County to

- 2 -

raise the old structure or construct a new screen house. After
receiving a stop-work order from the County, Weimer applied for a
variance to permit construction of the new screen house.

The Commissioner determined that the replacement of the screen
house, originally built in 1972 prior to the effective date of the
applicable zoning regulations, was "merely a continuation of the
original pavilion which existed on the property for nearly twenty
years without prior complaint." The Commissioner also determined
that "the relief requested sufficiently complies with the
requirements of Sections 307.1, 307.2, and 500.14 of the BCZR."
The Commissioner based his determination, in part, upon the
findings of the Director of the Office of Zoning Administration and
Development Management ("Director"):

Findings: The Chesapeake Bay Critical
Area Program does not allow the placement of
new structures within the shoreline buffer;
however, as stated above, the program does
allow the continuation but not necessarily the
expansion of existing permitted uses. If
evidence can be presented that verifies the
size and location of a previously permitted
structure, then it will be allowed to be
rebuilt.

Findings: This property appears to be
within the 25% impervious surface limit. This
submitted site plan does not include
dimensions of the existing house; however, a
site visit by this Department estimated the
dimensions and found them to be within this
limit.

On appeal, the "findings" of the Board were as follows:

The testimony and exhibits indicate that the
screen house is merely a continuation of the
site being used for a screen house which has
existed on the property for at least 20 years
without complaint. In addition, said

- 3 -

testimony and exhibits are sufficient to
indicate to the Board that Sections 307.1,
307.2 and 500.14 of the BCZR have been
complied with.

In accordance with Section 500.14 of the
BCZR, the Director of the Department of
Environmental Protection and Resource
Management ("DEPRM") has submitted
recommendations which describe what steps the
Petitioner must take to insure that the relief
requested complies with the following
Chesapeake Bay Critical Area requirements to:

- 1) Minimize adverse impacts on water
quality that results from pollutants that
are discharged from structures or
conveyances or that have run off from
surrounding lands;
- 2) Conserve fish, wildlife, and plant
habitat; and
- 3) Be consistent with established land
use policies for development in the
Chesapeake Bay Critical Area which
accommodate growth and also address the
facts that, even if pollution is
controlled, the number, movement, and
activities of persons in that area can
create adverse environmental impacts.

These recommendations shall be attached
hereto and become a permanent part of the
decision rendered in this appeal. There is no
evidence in the record that the relief
requested would adversely affect the health,
safety and/or general welfare of the public
provided there is compliance with requirements
of DEPRM as more fully described in the
aforesaid attachment.

After reviewing all the testimony,
exhibits and argument, the Board is of the
opinion that the relief requested in the
petition submitted in compliance with the plat
submitted should be granted and will issue an
order granting the request.

The circuit court affirmed the Board's decision and stated:

This Court has reviewed the transcript of
record as well as memorandum filed by
Appellant and Appellees, and considered

- 4 -

arguments presented at a hearing. As trier of
fact, it is the Board's responsibility to
weigh all the evidence presented to it and
rule accordingly. This Court's responsibility
is to ensure that the Board's decision is
supported by competent, material and
substantial evidence. It is this Court's
finding that the Board addressed the issues
presented and that there was substantial
evidence to support the Board's decision.

Discussion

I. Standard of Review

In *United Steelworkers Local 2610 v. Bethlehem Steel Corp.*,
298 Md. 665, 679 (1984), the Court of Appeals stated:

Judicial review of administrative action
differs from the appellate review of a trial
court judgment. In the latter context the
appellate court will search the record for
evidence to support the judgment and will
sustain the judgment for a reason plainly
appearing on the record whether or not the
reason was expressly relied upon by the trial
court. However, in judicial review of agency
action the court may not uphold the agency
order unless it is sustainable on the agency's
findings and for the reasons stated by the
agency.

When the record fails to disclose findings of fact by the agency,
the Court ordinarily remands the case for appropriate findings of
fact. See *Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza
Venture*, 68 Md. App. 650, 656-57 (1986).

"Expert discretion is the lifeblood of the
administrative process, but 'unless we make
the requirements of administrative action
strict and demanding, expertise, the strength
of modern government can become a monster
which rules with no practical limits on
discretion.'"

Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 167
(1962) (citation omitted).

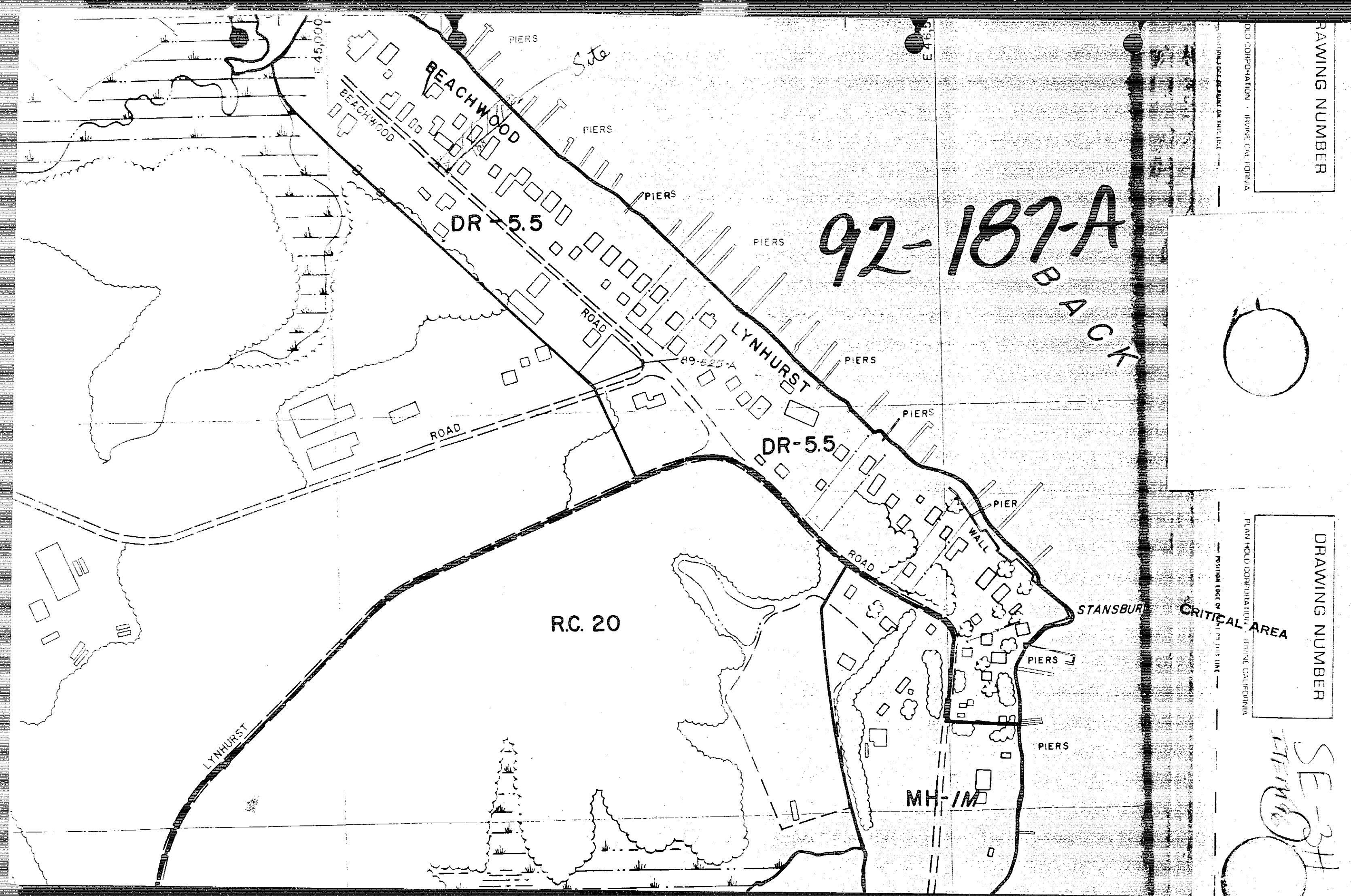
- 5 -

We agree with Rakowski that the circuit court erred when it
affirmed the Board's decision to grant the variance because the
Board failed to make appropriate findings of fact. Rakowski
rightly asserts that the circuit court failed to address whether
the Board had the authority, under §§ 307.1 and 307.2, to grant
Weimer's request for a variance, whether the variance violated the
minimum set-back requirements set forth in § 400.1, and whether the
Board made sufficient findings of fact. Furthermore, the circuit
court applied the wrong standard of review when it affirmed the
Board's decision. The circuit court stated that the Board's
decision was "supported by competent, material and substantial
evidence" and that "there was substantial evidence to support the
Board's decision." A reviewing court, however, may only affirm the
decision of an administrative agency based upon the agency's
findings of fact. In the case *sub judice*, the Board failed to make
sufficient findings of fact upon which the circuit court could have
upheld the agency's decision.

II. Does the BCZR Permit a Variance for the Screen House?

Both the Board and the circuit court relied on §§ 307.1,
307.2, and 500.14 of the BCZR to reach their conclusions that the
Commissioner had the authority to grant Weimer's request for a
variance. Section 307 of the BCZR provides in pertinent part:

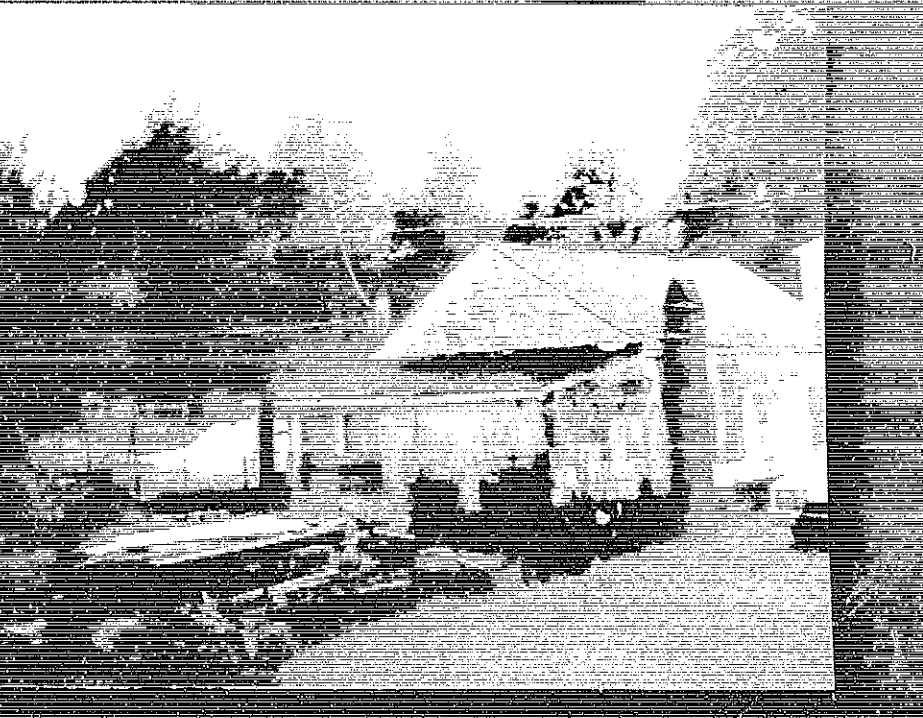
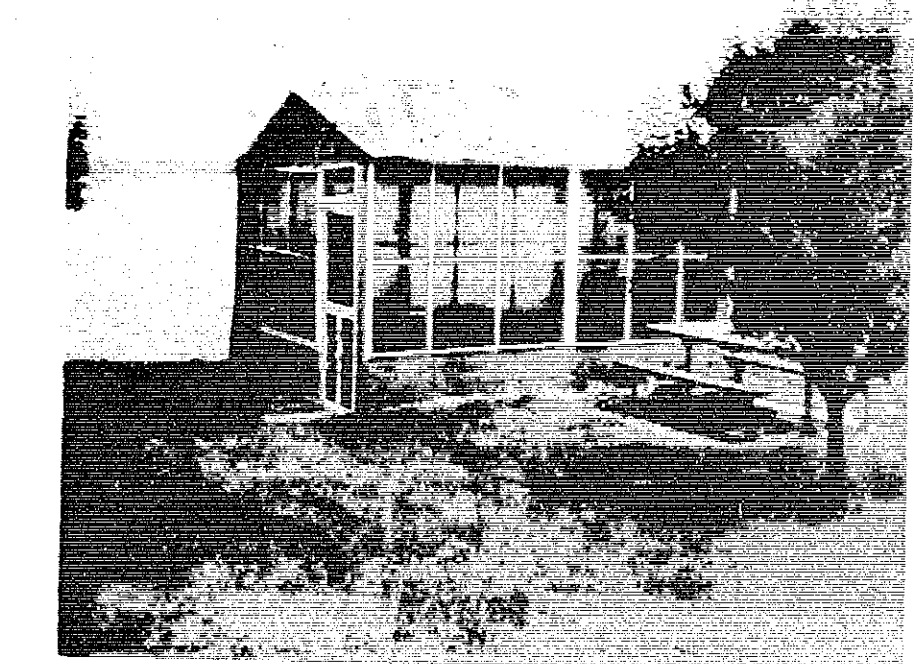
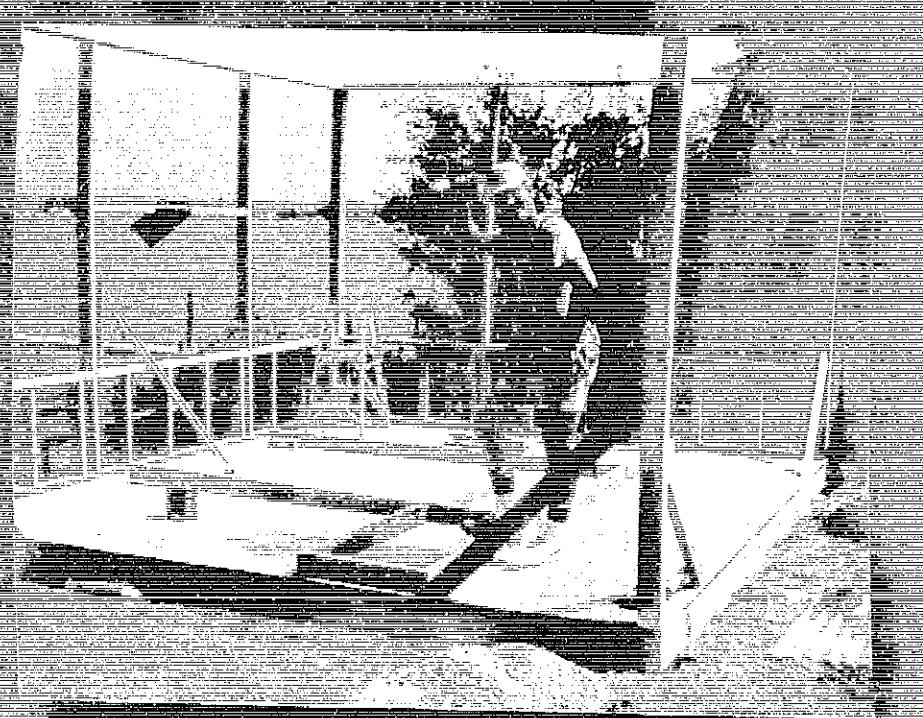
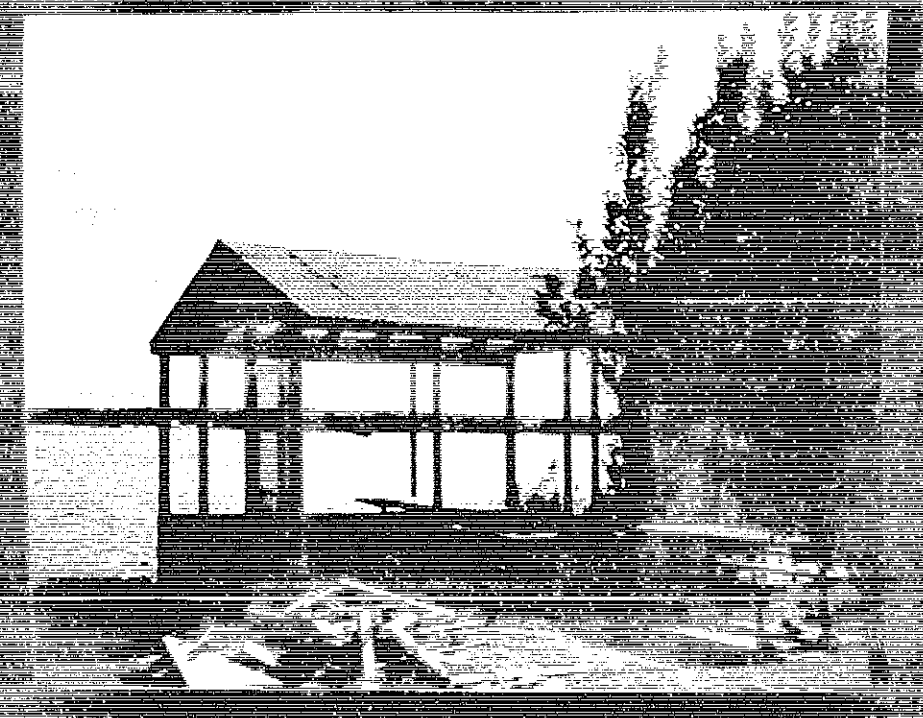
307.1--The zoning commissioner of Baltimore
County and the County Board of Appeals,
upon appeal, shall have and they are
hereby given the power to grant variances
from height and area regulations, from
off-street parking regulations and from
sign regulations, only in cases where
special circumstances or conditions exist



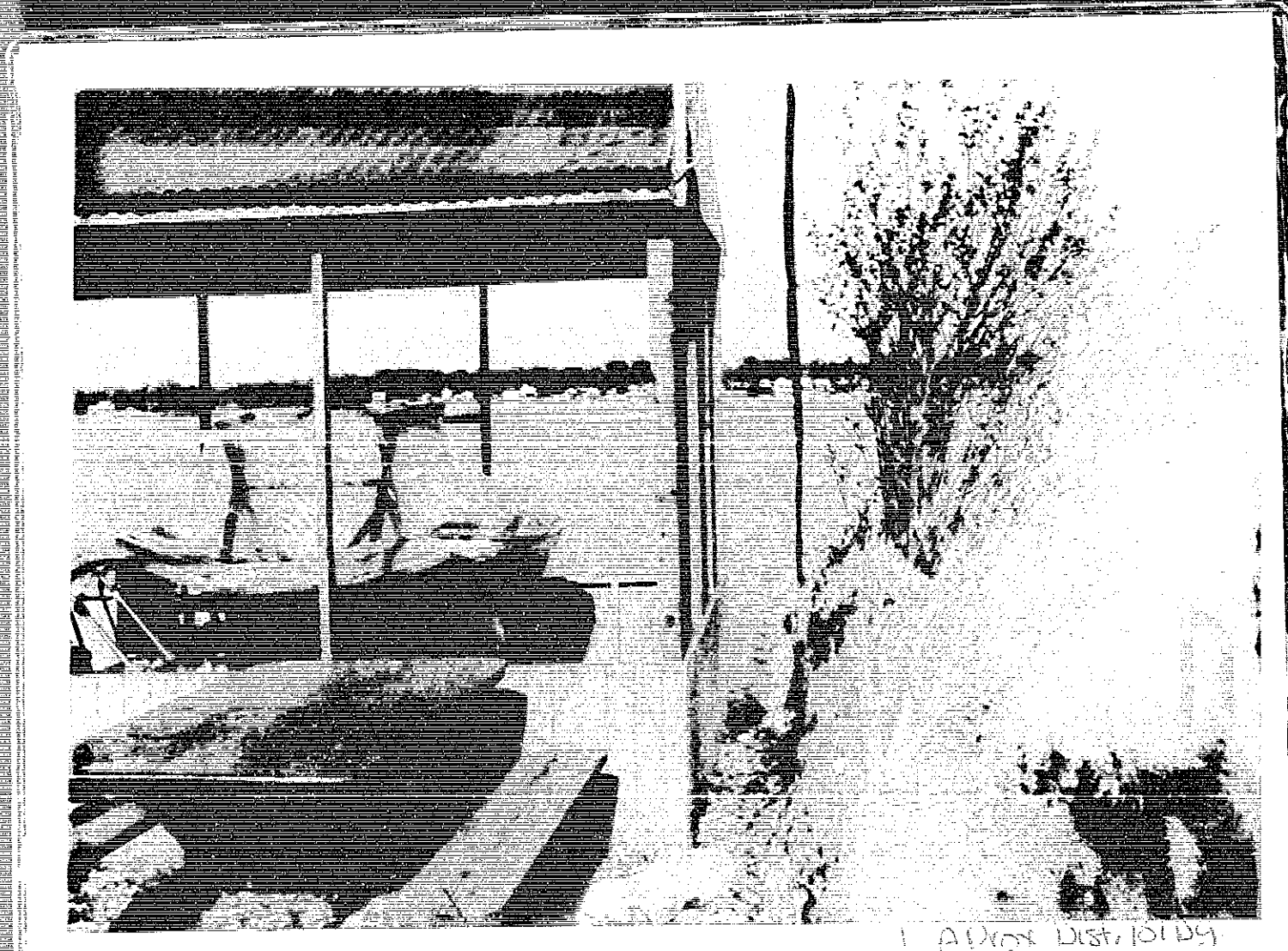
92-187-A
BACK

DRAWING NUMBER
CRITICAL AREA
SE-34
11/1/81

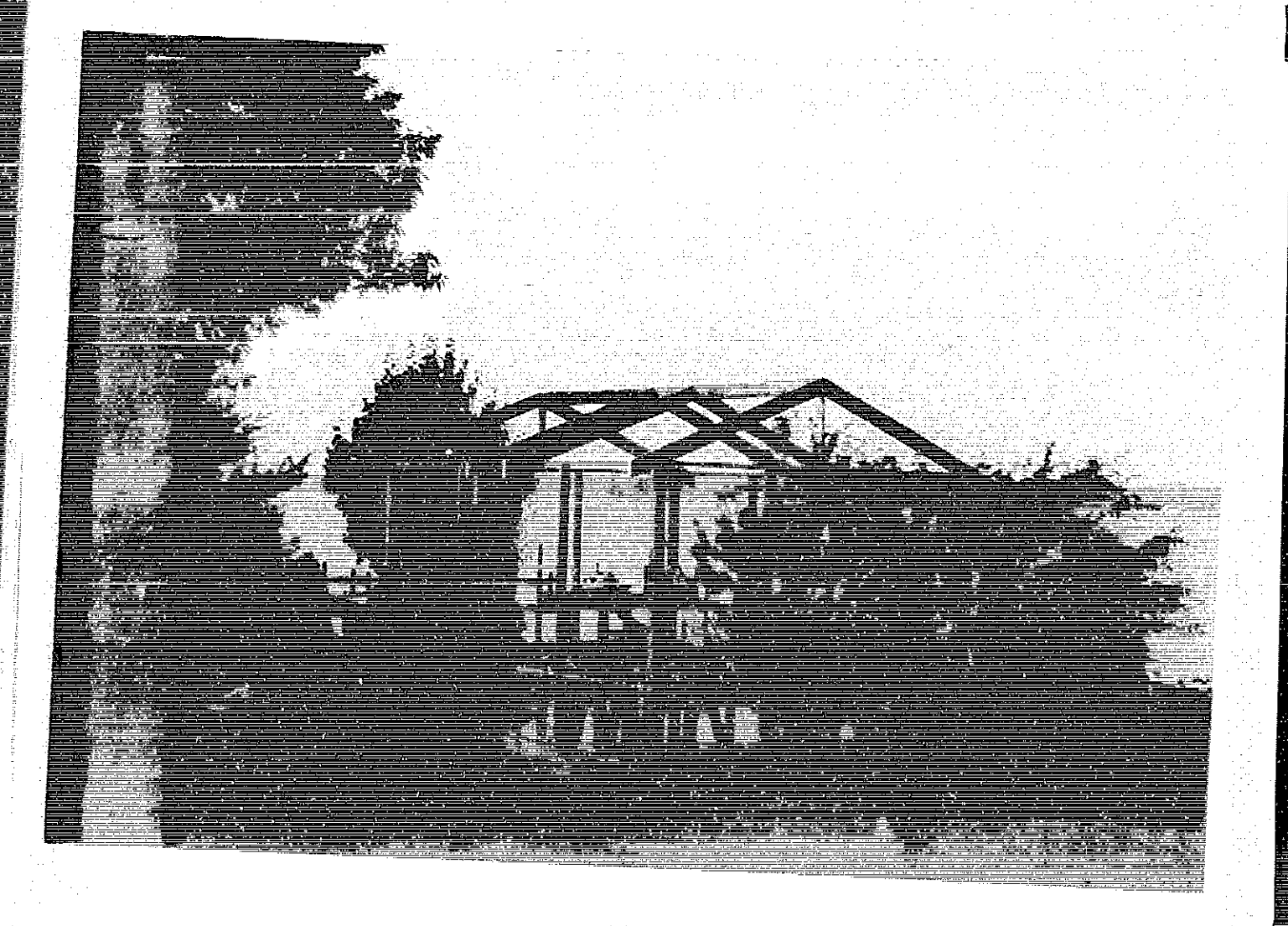
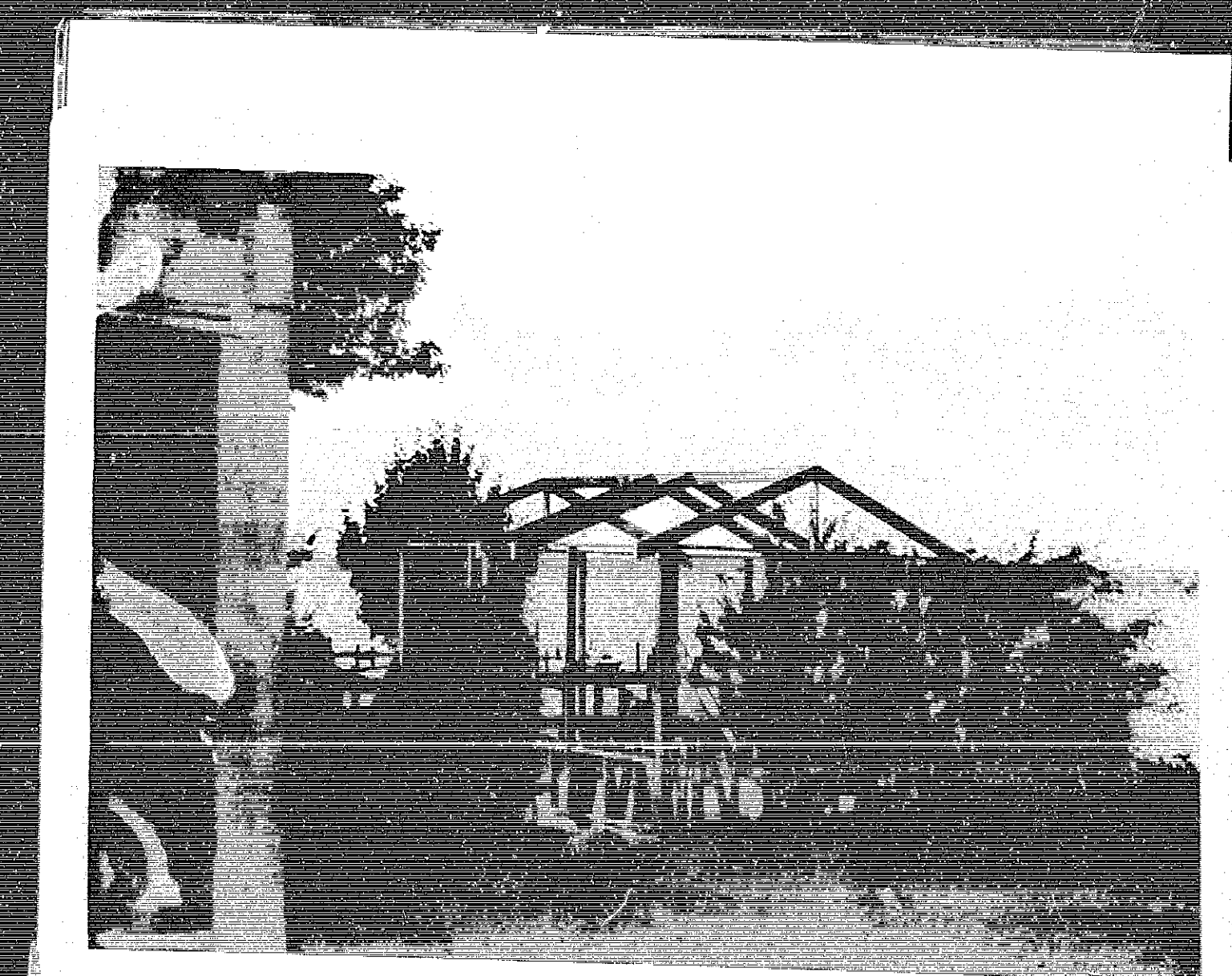
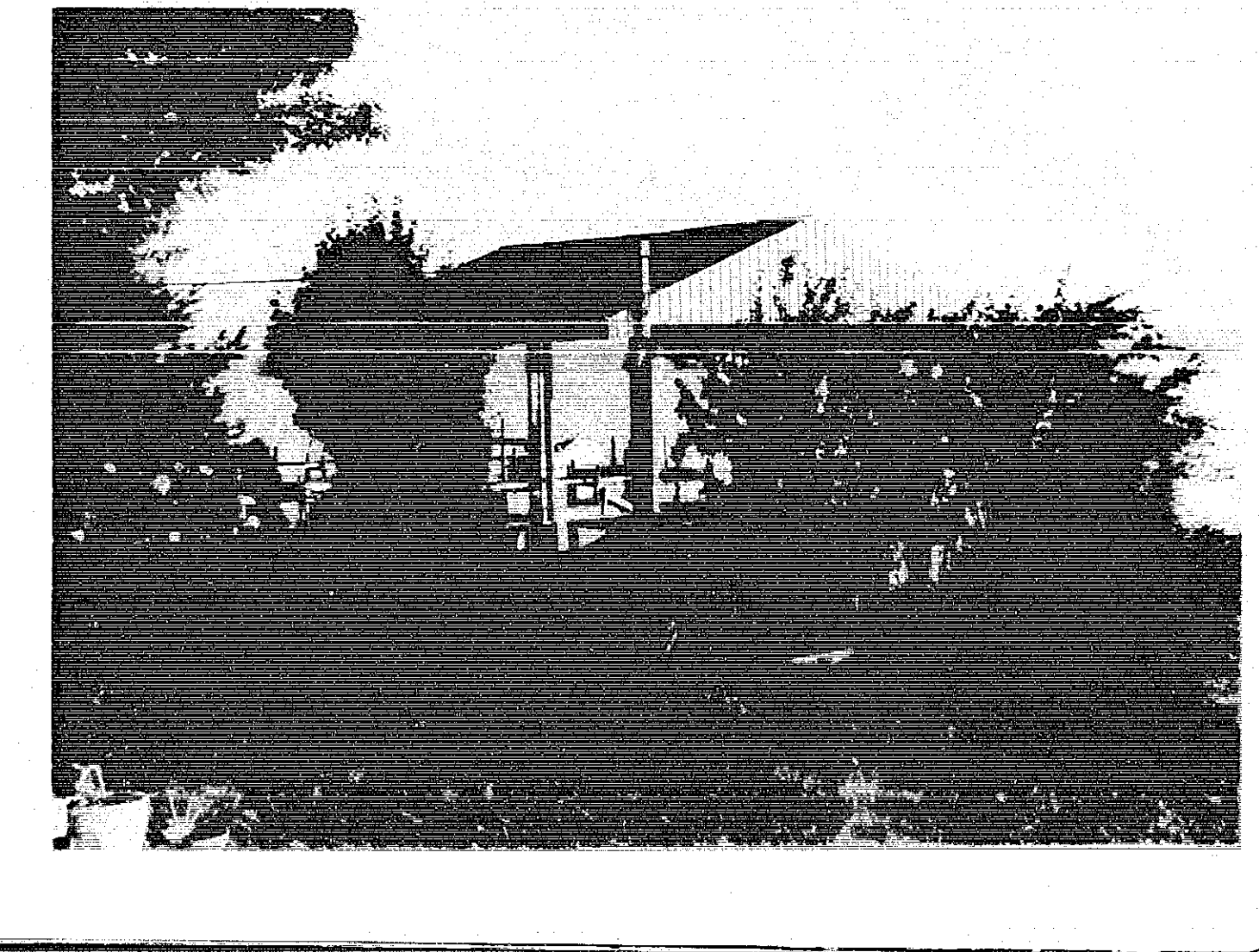
92-187-A

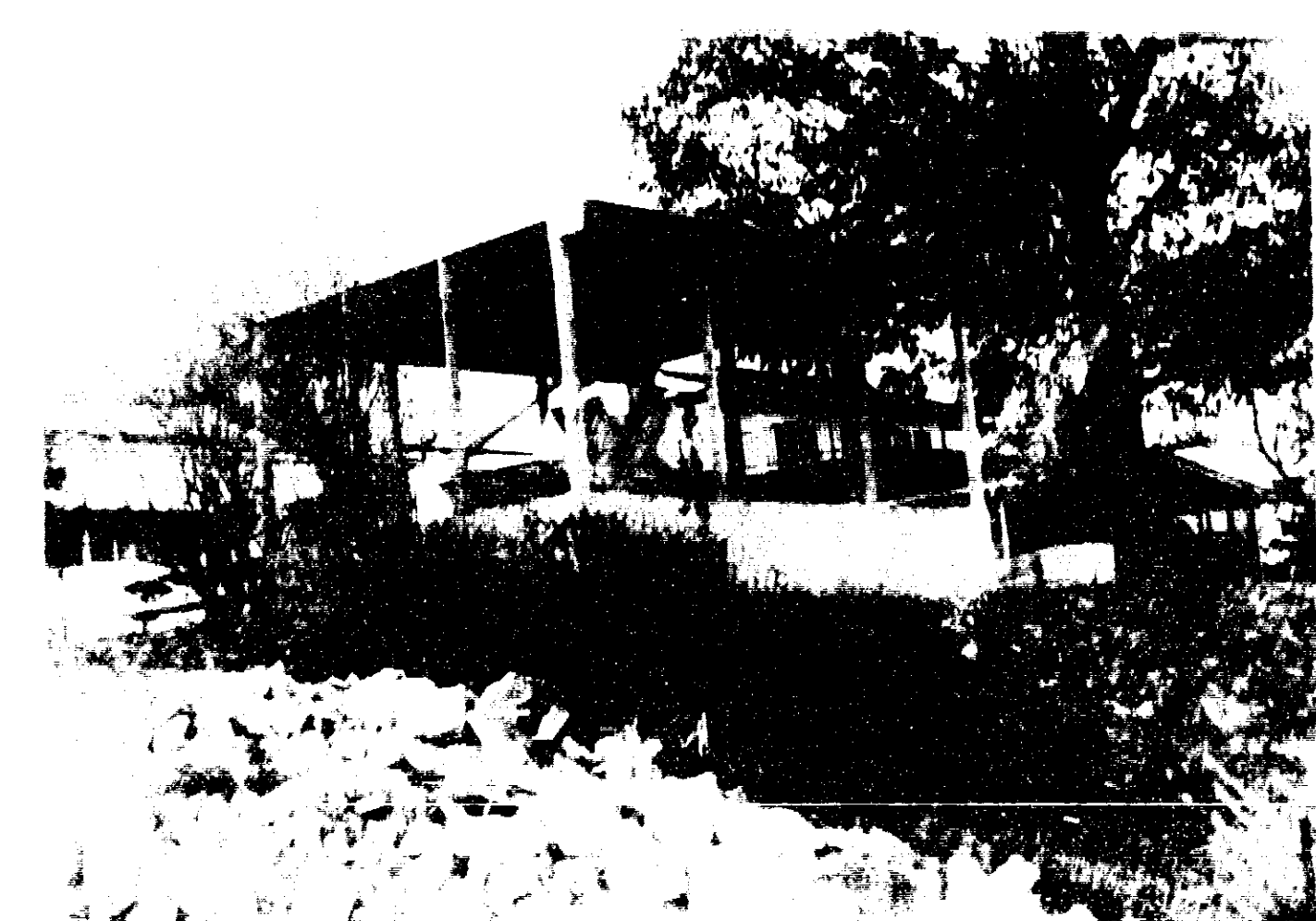
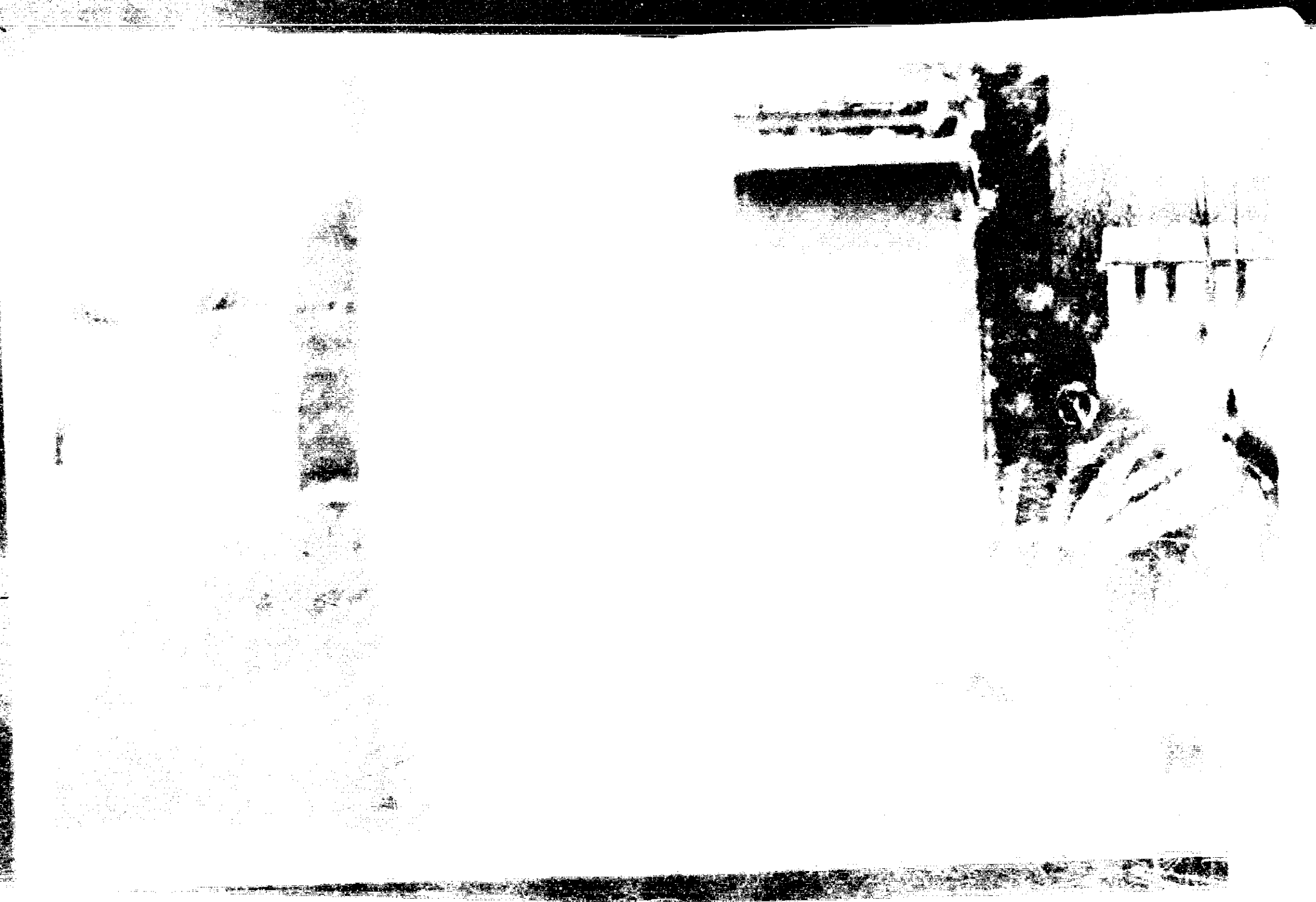
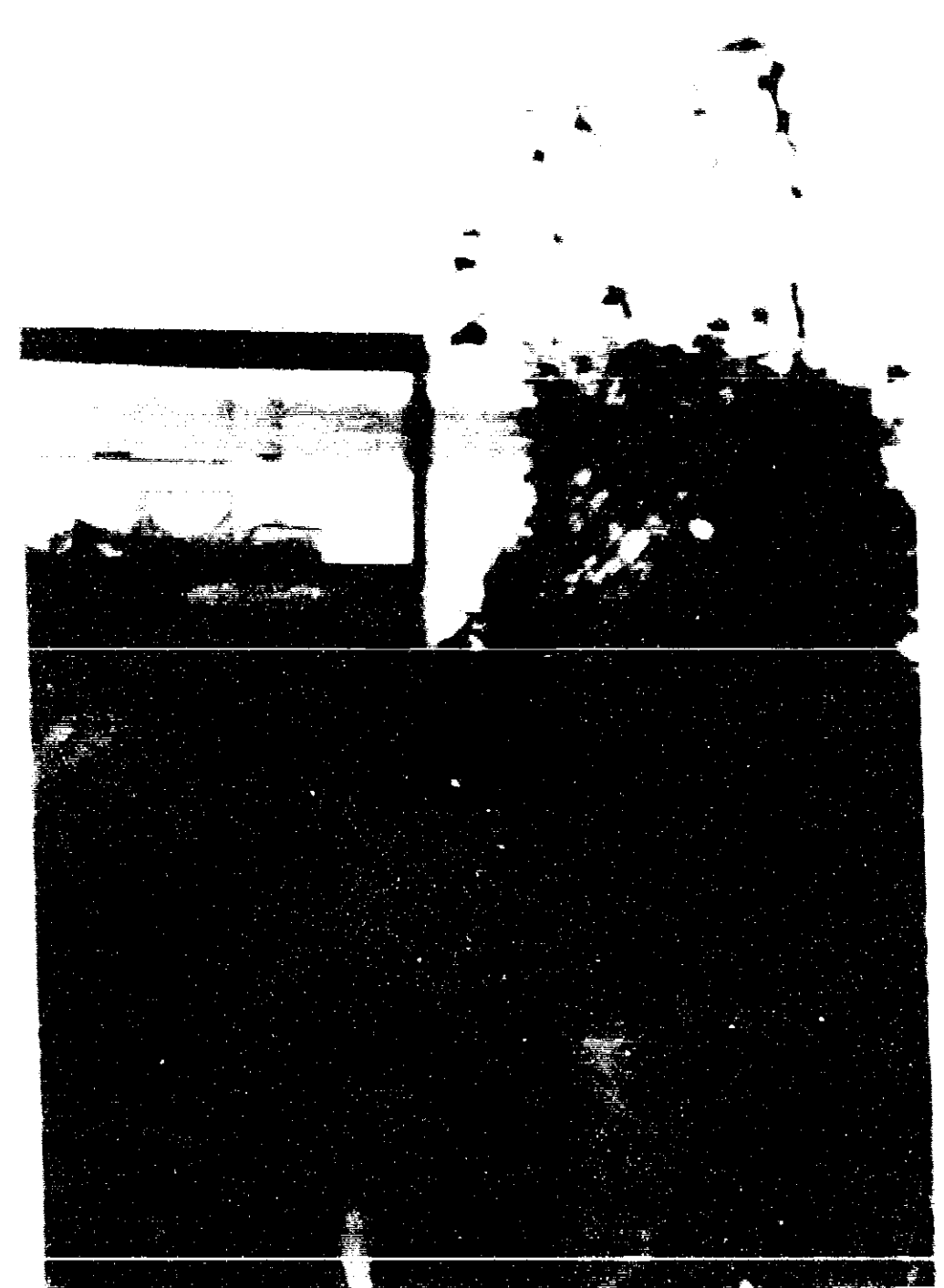
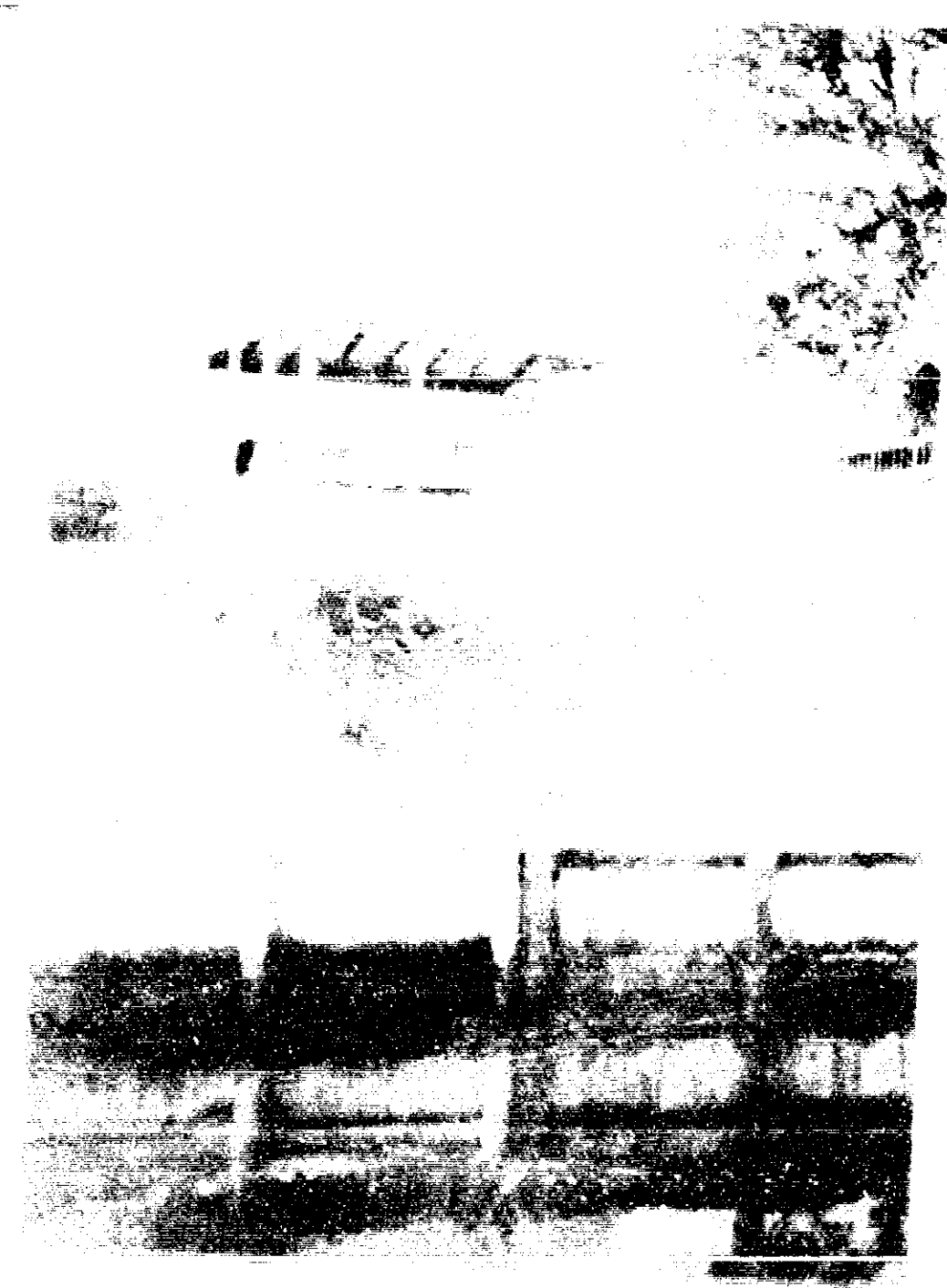


PETITIONER'S
EXHIBIT 2



This tree was cut 1FT 8" FROM STAKE
ADON DIST. 100' 10"





that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. . . . They shall have no power to grant any other variances. . . .

307.2--In addition to the authority and limitations set forth in Section 307.1 above, within the Chesapeake Bay Critical Area, the zoning commissioner, or upon appeal, the Board of Appeals of of [sic] Baltimore County, shall have the power to authorize the expansion of those uses in existence at the time of the effective date of this subsection; any order granting a variance pursuant to this subsection shall contain findings of fact which shall include the following: . . .

1. That special conditions or circumstances exist that are peculiar to the land or structure within the critical area of the county; . . .

2. That strict compliance with the critical area regulations would result in practical difficulty, unreasonable hardship or severe economic hardship; . . .

3. That strict compliance with the critical area regulations will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the critical area of the county; . . .

4. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by the critical area regulations to other lands or structures within the critical area of the county; . . .

5. That the variance request is not based upon conditions or circumstances which are the result

of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property; . . .

6. That the granting of a variance will be in harmony with the general spirit and intent of the critical area regulations of the county; and . . .

7. That the variance conforms to the requirements as stated in Section 500.14, B.C.Z.R. . . .

We agree with Rakowski that § 307.1 does not apply to Weimer's request for a variance. Section 307.1 permits the Commissioner and the Board to grant variances "from height and area regulations, from off-street parking regulations, and from sign regulations." Clearly, a variance for the construction of an accessory building does not qualify as a variance from height and area regulations under § 307.1; however, the BCZR does permit the Commissioner and the Board to authorize the expansion of nonconforming uses in existence at the time of the effective date of § 307.2, which was 1988. The original screen house was constructed in 1972, and therefore, was in existence at the time of the effective date of § 307.2. The original screen house, however, was constructed in violation of § 400.1 of the BCZR, and therefore was not a use sanctioned by law. The BCZR defines nonconforming use as "a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." BCZR § 101 (1987). Section 307.2 does not permit the expansion of illegal uses.

The Board determined that the construction of the new screen house was merely a continuation of the original screen house that had been in existence since 1972. The Board based its determination on the Director's statement, made pursuant to § 500.14 of the BCZR, that the Chesapeake Bay Critical Area Program allows the continuation, but not necessarily the expansion of existing permitted uses. The Board, however, failed to recognize the mandatory language in § 400.1 of the BCZR. Pursuant to § 400.1, accessory buildings may only be located in the rear yard and "in no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met." Significantly, the zoning regulations governing accessory buildings are located in Article 4 of the BCZR, the purpose of which is as follows:

Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations.

Clearly, the County saw fit to distinguish certain regulations from the general height and area regulations set forth in Article 3. The testimony before the Board indicated that Weimer built the original screen house in his front yard, 2.16 feet from Rakowski's side property line, in 1972, and that he wanted to reconstruct the new screen house on the same site. Section 400.1, effective 1963, mandates that in no case shall an accessory building be located

less than two and a half feet from a side lot line. Although the BCZR, under compelling circumstances, might permit a variance for an accessory building, under no circumstances does § 400.1 of the BCZR permit a variance for the construction of Weimer's screen house 2.16 feet from Rakowski's side property line.

The Board explicitly found that the reason for granting the petition was that the screen house had existed "for at least 20 years without complaint." This really has no bearing on the issues involved in this case unless the Board was implicitly finding that this was a nonconforming use. This it cannot be. A nonconforming use is one that is legal prior to the time new zoning regulations become effective, and therefore remains exempt from the new regulations. Had Weimer constructed his screen house in 1955, prior to the institution of the BCZR, then Weimer's screen house would constitute a nonconforming use; however, Weimer built his screen house in 1972, several years after the enactment of § 400.1, which requires that accessory buildings be constructed in rear yards with minimum set-back requirements of two and one half feet. Therefore, Weimer's screen house was never sanctioned by law and does not constitute a nonconforming use which the Board can expand pursuant to § 307.2.

III. Did the Board Make Sufficient Findings of Fact?

Even assuming, *arguendo*, that the construction of the new screen house constituted a permissive expansion of an existing use, the Board was required, pursuant to § 307.2 of the BCZR, to set forth findings of fact addressing the seven requirements listed

therein. The Board made no such findings. A reviewing court may not uphold an agency's decision if the record does not disclose the findings of fact used by the agency to reach its conclusion. When an agency fails to supply factual findings to support its decision, the decision may be deemed arbitrary. See *Mortimer v. Howard Research*, 83 Md. App. 432, 441 (1990). The Board's decision, in the case *sub judice*, lacked the specific factual findings necessary for a reviewing court to determine the basis of the agency's action. The Board summarized:

The testimony and exhibits indicate that the screen house is merely a continuation of the site being used for a screen house which has existed on the property for at least 20 years without complaint. In addition, said testimony and exhibits are sufficient to indicate to the Board that Sections 307.1, 307.2 and 500.14 of the BCZR have been complied with.

In *Anderson v. Board of Appeals*, 22 Md. App. 28, 36-37 n. 5 (1974), we recognized that, "[d]espite repeated admonitions by the Court of Appeals that the findings of administration boards are not to be limited to conclusions couched in the terms of the ordinance itself but rather are to include specific findings of facts that support their conclusions," administrative agencies frequently set forth their conclusions in boilerplate fashion, without supplying any specific findings of fact. In this case, we agree with Rakowski that the Board, which based its decision to grant the variance on §§ 307.1, 307.2, and 500.14, has not even set forth its conclusions using a boilerplate form of § 307.2.

III. & IV. Weimer's Burden of Proof and the Minimum Set-Back Requirements

Although we would ordinarily remand a case when an agency makes "no findings of fact worthy of the name," we shall reverse the decision of the circuit court because the record demonstrates that the screen house was not a use for which a variance was permitted. *Turner v. Hammond*, 270 Md. 41, 57 (1973); see also *Ocean Hideaway*, 68 Md. App. at 664-65 (holding that where the undisputed evidence shows that the proposed building would violate a mandatory requirement of the zoning code, the Court may reverse the decision of the Board, rather than remand the case for appropriate findings). As we have already discussed, the testimony demonstrates that the screen house, when originally built in 1972, did not meet the minimum, mandatory set-back requirement of two and one half feet from Rakowski's side property line. The reconstruction of a screen house on that same site would amount to a continuation of a use that is in violation of a mandatory zoning requirement.

The BCZR does empower the Board, under Article V, § 2-85.1 "to make a change as to the district, division or zone within which a particular piece of property is classified (zoning reclassification) as herein provided." Before the Board may reclassify property or grant a use variance pursuant to 2-85.1, however, the Board must find that substantial change in the character of the neighborhood has occurred or that the last classification of the property was established in error. See also

BCZR, Rules of Practice and Procedure of County Board of Appeals, Rule 9 (Appendix G, 1987).

In *Anderson*, 22 Md. App. at 38-39, this Court characterized a use variance as "customarily concerned with 'hardship' cases, where the land cannot yield a reasonable return if used in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, . . ." Weimer does not demonstrate that, without a variance from § 400.1, he would suffer a hardship or would be unable to use his property as a residence. Furthermore, the existence of the screen house on the front yard of Weimer's property is the result of Weimer's own doing. A hardship that is self-created cannot be the basis for granting a variance. See *Wilson v. Mayor of the Town of Elkton*, 35 Md. App. 417, 427-28 (1977) ("the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief."). Because the Commissioner and the Board granted a variance that they were not permitted, under the BCZR, to grant, and because Weimer has not sustained his burden of proving that he is entitled to a variance from use regulation § 400.1 of the BCZR, we reverse the opinion and order of

the Board granting Weimer a variance for the construction of his screen house.

JUDGMENT REVERSED;
CASE REMANDED TO THE
CIRCUIT COURT FOR
REMAND TO THE BOARD
OF ZONING APPEALS
WITH DIRECTION THAT
THE PETITION FOR THE
VARIANCE BE DENIED.
APPELLEE TO PAY THE
COSTS.



92-187-A

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE
1" = 200' ±

LOCATION

SHEET

DATE
OF
PHOTOGRAPHY
JANUARY
1986

NORTH POINT

CRITICAL AREAS: E
3-H

ITEM 196

RODES, ULMAN, PESSIN & KATZ, P.A.

ATTORNEYS AT LAW
901 DULANEY VALLEY ROAD
SUITE 400
TOWSON, MARYLAND 21204
(410) 938-8800
(410) 938-8806 Facsimile
(410) 823-6017 Telex

10480 LITTLE PATENT PARKWAY
SUITE 1000
COLUMBIA, MARYLAND 21044
(410) 766-2000
(410) 996-1717 D.C. Direct
(410) 766-2005 Facsimile

Michael C. Hodas
Louis Jay Ullman
David N. Pessin
Gerald M. Katz
Michael P. Donnelly
Thomas J. Gisriel
Joseph P. Kempler
Kevin F. Breen

Clerk of the Court of
Special Appeals of Maryland
Courts of Appeal Building
Rowe Boulevard and Taylor Avenue
Annapolis, Maryland 21401

Re: Rakowski v. Weimer, et al.
September Term, 1993
No. 1543

Dear Mr. Clerk:

Enclosed you will find a Notice of Change of Address for
filing in the above-referenced case.

Very truly yours,

Thomas J. Gisriel
Thomas J. Gisriel

TJG/rsl
Enclosure
cc: Mr. and Mrs. James W. Weimer
Michael B. Sauer, Esquire

February 24, 1994

90 FEB 28 PM 12:46

Delivered noted 2/28/94

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

RONDALYN RAKOWSKI
(now known as Rondalyn Lots)

Appellant

No. 1543

V.

September Term, 1993

JAMES W. WEIMER, et ux.

Appellees

NOTICE OF CHANGE OF ADDRESS

Please note counsel for Appellant's new address:

Thomas J. Gisriel
RODES, ULMAN, PESSIN & KATZ, P.A.
901 Dulane Valley Road, Suite 400
Towson, Maryland 21204

Counsel's telephone and fax numbers remain the same.

Thomas J. Gisriel
Thomas J. Gisriel

RODES, ULMAN, PESSIN & KATZ, P.A.
901 Dulane Valley Road, Suite 400
Towson, Maryland 21204
(410) 938-8800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24TH day of February, 1994, a copy of the foregoing Notice of Change of Address was mailed, postage prepaid, to: Mr. and Mrs. James W. Weimer, 4116 Beachwood Road, Baltimore, Maryland 21222; Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

Thomas J. Gisriel
Thomas J. Gisriel

(tjg.gen\lots.nac)

To be filled in by clerk,
Court of Special Appeals

COURT OF SPECIAL APPEALS OF MARYLAND

CIVIL APPEAL PREHEARING INFORMATION REPORT

- Title of case: In the Matter of James W. Weimer, et ux. for a Variance on Property located on the north side of Beachwood Road, 1400' west of the centerline of Lynhurst Road (4116 Beachwood Road) 15th Election District, 7th Councilmanic District
Which party is Appellant in Court of Special Appeals: Rondalyn Rakowski
- Names, addresses, and telephone numbers of counsel:
For Appellant: Thomas J. Gisriel, Rodes, Ulman, Pessin & Katz, P.A., 22 W. Allegheny Avenue, Suite 400, Towson, MD 21204 (410) 938-8800
For Appellees: Mr. and Mrs. James W. Weimer (pro se) 4116 Beachwood Road Baltimore, MD 21222
- Trial court: ~~15th Election District, 7th Councilmanic District~~ affirmed by Circuit Court for Balto. Co.
a. Docket No: Bd. of Appeals 92-187-A c. Trial Judge: Cir. Ct. Thomas J. Bollinger
b. ~~County/Non-Jury/Statutory/Judicial~~
- Type of case (e.g., automobile negligence, worker's compensation, breach of contract, domestic, employment dispute, product liability, property dispute, tax, UCC, zoning, etc.)
Administrative appeal - property use dispute
- State the approximate amount in controversy, or if other than money damages, the type of relief sought from the trial court.
Reverse granting of variance permitting construction of a screenhouse
- Trial
a. Duration of trial: 1/2 day (Board of Appeals) 1/2 Hour (Circuit Court)
b. Number of exhibits in evidence: 13 (Board of Appeals) 0 (Circuit Court)
- Judgment
a. Date of judgment being appealed: (if date is other than that shown on docket, please explain.)
August 11, 1993
b. Describe judgment and give a brief description of the trial court's disposition being appealed. (Attach a copy of any written opinion of the trial court.)
The Circuit Court, deferring to presumption of validity but failing to address legal issues presented to it, affirmed the Board of Appeals
c. Did judgment finally dispose of all claims by and against all parties? If not, please explain why judgment is appealable. (See Md. Rule 2-402; Courts Art., §§ 12-301, 12-303.)
Yes

d. Was post-judgment motion under Md. Rule 2-532, 2-533, or 2-534 filed? If so, date filed and date of disposition

8. Date appeal noted: September 3, 1993

9. Issues proposed to be raised on appeal. As to each issue, state whether and how the issue was raised in and decided by the trial court, whether you anticipate a defense of non-preservation, waiver, or harmless error, and how you propose to respond to any such defense.

1. The Board of Appeals lacks the power to grant the requested variance. This issue was raised in the Board of Appeals orally, and in the Petition, the Memorandum and argument before the Circuit Court, but was not addressed by either the Board of Appeals or the Circuit Court.
2. The Board of Appeals failed to specify the reasons for its decision and failed to make the statutorily required findings of fact. This issue was raised in the Petition, the Memorandum and argument before the Circuit Court, but was not addressed by that Court.
3. The variance granted is illegal because it violates the minimum set-back for an accessory structure from the side lot line. This argument was raised in the Petition, the Memorandum and argument before the Circuit Court, but was not addressed by that Court.

10. Settlement discussions:
a. Was settlement discussed before trial or hearing which resulted in judgment? Describe briefly.
No

b. Has settlement been discussed since judgment? Describe briefly.
No

c. Do you believe that a Prehearing Conference would be helpful? Why?
No

11. If this appeal proceeds, given the number of pleadings and exhibits and the length of trial, do you anticipate that the record extract will exceed 100 pages in length? If so, state why the procedure authorized in Md. rule 8-501(1) - Deferred Record Extract - should not be used.
No

NOTICE

A prehearing conference is designed to encourage the parties to reach a voluntary settlement before incurring the expense of securing a transcript and preparing and printing briefs, or, if that is not possible, to limit the issues and to consider the option of an expedited appeal pursuant to Md. Rule 2-507. Please set forth succinctly any additional information and attach any documents or relevant pleadings which will assist the Court and the parties in reaching an agreement to accomplish these ends. Information concerning settlement negotiations will be kept strictly confidential.

CERTIFICATION

I hereby certify that a copy of the foregoing statement was mailed to Mr. and Mrs. James W. Weimer, 4116 Beachwood Road, Baltimore, Maryland 21222; Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204; and County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

9/13/93
Signed Thomas J. Gisriel

TO BE SIGNED BY THE ATTORNEY WHO IS HANDLING THE APPEAL OR BY THE APPELLANT PERSONALLY IF NOT REPRESENTED BY AN ATTORNEY.

RODES, ULMAN, PESSIN & KATZ, P.A.

ATTORNEYS AT LAW
22 W. ALLEGHENY AVENUE
SUITE 400
TOWSON, MARYLAND 21204
(410) 938-8800
(410) 938-8806 Facsimile
(410) 823-6017 Telex

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Michael C. Hodas
Louis Jay Ullman
David N. Pessin
Gerald M. Katz
Michael P. Donnelly
Thomas J. Gisriel
Joseph P. Kempler
Kevin F. Breen

September 13, 1993

HAND DELIVERED

Clerk of the Court of
Special Appeals of Maryland
Courts of Appeal Building
Rowe Boulevard & Taylor Avenue
Annapolis, MD 21401

Re: In the Matter of the Application of James W. Weimer, et ux for a Variance on Property located on the North Side of Beachwood Road, 1400' West of the Centerline of Lynhurst Road (4116 Beachwood Road) 15th Election District, 7th Councilmanic District

Dear Mr. Clerk:

Enclosed please find Civil Appeal Prehearing Information Report for filing in the above-captioned case.

Very truly yours,

Thomas J. Gisriel
Thomas J. Gisriel

TJG/rsl
Enclosure
cc: Mr. and Mrs. James W. Weimer
Michael B. Sauer, Esquire
County Board of Appeals

11 22 PM 02 43S66

CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL CATEGORY APPEAL

ATTORNEYS

Thomas J. Gisriel
22 W. Allegheny Ave., Ste 400
21204 938-8800
901 DULANEY VALLEY RD
SUITE 400

IN THE MATTER OF THE
APPLICATION OF JAMES W.
WEIMER, ET UX FOR A VARIANCE
ON PROPERTY LOCATED ON THE
NORTH SIDE OF BEACHWOOD ROAD,
1400' WEST OF THE CENTERLINE
OF LYNHURST ROAD (4116
BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

E

90 OCT 12 PM 1:00:06

Box 97

#92-187-A

- Nov. 20, 1992 Rondalyn Rakowski's Order for Appeal for the Order of the Baltimore County Board of Appeals, fd.
- Nov. 23, 1992 Certificate of Notice, fd.
- Dec. 1, 1992 Appellant's Petition for Appeal, fd.
- Dec. 17, 1992 Transcript of Record, fd.
- Dec. 31, 1992 Notice of Filing of Record, fd. Copy sent.

(kv)(6)Feb. 1, 1993 - Appellant's memorandum, fd.
April 14, 1993 Hon. Thomas J. Bollinger. Hearing had testimony taken. Court's written opinion to be filed.

PH(7) Aug 12, 1993 Opinion and Order of Court Affirming the grant by the County Board of Appeals, fd. (TJB)

PH(8) Sept. 3, 1993 Plaintiff's Order entering an appeal to the Court of Special Appeals of Maryland, fd. (Docket 6, Folio 198)

PH(9) October 6, 1993 Order of Court from the Court of Special Appeals that the above captioned appeal proceed without a Prehearing Conference, fd. (Hon. Paul E. Alpert)

DECEMBER 3, 1993- ORIGINAL RECORD AND PROCEEDINGS SENT TO THE COURT OF SPECIAL APPEALS OF MARYLAND BY CERTIFIED MAIL.

Docket 38 Page 132 Case 92CV 10821

CASE NO. 92CV10821 38/132

ff (11) June 28, 1994 - Original Papers & Mandate from the Court of Special Appeals Received & f. DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:

May 24, 1994: Per Curiam filed. Judgment reversed; case remanded to the Circuit Court for remand to the Board of Zoning Appeals with direction that the Petition for the variance be denied. Appellee to pay the costs.

June 23, 1994 - Mandate Issued.

PH(12) Oct 6, 1994 Order of Court Denying the Petition for variance and Remanding case to the Baltimore County Board of Appeals, etc, fd. (TJB)

IN THE MATTER OF
JAMES WEIMER, ET UX
FOR A VARIANCE ON PROPERTY
ON BEACHWOOD ROAD, ETC.

IN THE
CIRCUIT COURT
FOR BALTIMORE COUNTY
CASE NO. 92 CV 10821

ORDER

In accordance with the unreported, per curiam Opinion and Order of the Court of Special Appeals, it is this 28th day of September, 1994, by the Circuit Court for Baltimore County, ORDERED that this case be remanded to the Baltimore County Board of Appeals with direction that the Petition for the variance be DENIED.

True Copy Test
THOMAS J. BOLLINGER, JUDGE

Copies sent to:

Thomas J. Gisriel, Esquire
22 W. Allegheny Ave., #400
Towson, MD 21204

Michael B. Sauer, Esquire
Baltimore County Board of Appeals
(Case No. 92-187-A)
Room 49, Old Courthouse
Towson, MD 21204

FIL OCT 06 1994

92-187-A - James W. Weimer, et ux
ORDERED case to C.B. of A.
w/ direction to DENY variance.
(Hon. Thomas J. Bollinger)

IN THE MATTER OF * IN THE
JAMES WEIMER, ET UX * CIRCUIT COURT
FOR A VARIANCE ON PROPERTY * FOR BALTIMORE COUNTY
ON BEACHWOOD ROAD, ETC. * CASE NO. 92 CV 10821
* * * * *

ORDER

In accordance with the unreported, per curiam Opinion and Order of the Court of Special Appeals, it is this 3rd day of September, 1994, by the Circuit Court for Baltimore County,

ORDERED that this case be remanded to the Baltimore County Board of Appeals with direction that the Petition for the variance be DENIED.

/s/
THOMAS J. BOLLINGER, JUDGE

Copies sent to:

Thomas J. Gisriel, Esquire
22 W. Allegheny Ave., #400
Towson, MD 21204

Michael B. Sauer, Esquire
Baltimore County Board of Appeals
(Case No. 92-187-A)
Room 49, Old Courthouse
Towson, MD 21204

IN THE MATTER OF THE
APPLICATION OF JAMES W.
WEIMER, ET UX FOR A VARIANCE
ON PROPERTY LOCATED ON THE
NORTH SIDE OF BEACHWOOD ROAD,
1400' WEST OF THE CENTERLINE
OF LYNHURST ROAD (4116
BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Case No.
38/132/92CV10821

NOTICE OF APPEAL

Rondalyn Rakowski, Appellant, hereby notices an appeal from the final judgment entered in this action on August 11, 1993.

Thomas J. Gisriel
Thomas J. Gisriel

HODES, ULMAN, PESSIN & KATZ, P.A.
22 West Allegheny Avenue
Suite 400
Towson, Maryland 21204
(410) 938-8800

Attorneys for Appellant,
Rondalyn Rakowski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 1993, a copy of the foregoing Notice of Appeal was mailed, postage prepaid, to: Mr. and Mrs. James W. Weimer, 4116 Beachwood Road, Baltimore, Maryland 21222; Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204; and County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

Thomas J. Gisriel
Thomas J. Gisriel

(tjg.gen\rakowski.noa)

HODES, ULMAN, PESSIN & KATZ, P.A.

Michael C. Hodes
Louis Jay Ullman
David N. Pessin
Gerald M. Katz
Michael P. Donnelly
Thomas J. Gisriel
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Mary Elizabeth Zorzi
David W. Botley
Susan B. Hughes
William M. Gotsman

Of Counsel
Allen D. Greif
Alan M. Foreman
David Borinsky
Kevin F. Brown, P.A.
John H. Haas

September 3, 1993

Clerk of the Circuit Court
for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: In the Matter of the Application of James W. Weimer, et ux, for a Variance on Property
Case No. 38/132/92CV10821

Dear Madam Clerk:

Enclosed please find Notice of Appeal for filing in the above-captioned case. Also enclosed is our firm's check in the amount of \$60.00 to cover the filing fee.

Very truly yours,

Thomas J. Gisriel

TJG/ral
Enclosures

cc: Mr. and Mrs. James W. Weimer
Michael B. Sauer, Esquire
County Board of Appeals

LO:111W L-d3566

RECEIVED
BALTIMORE COUNTY BOARD OF APPEALS
SEP 10 1993

93 DEC -6 AM 11:44
RONDALYN RAKOWSKI * IN THE CIRCUIT COURT
VS * FOR BALTIMORE COUNTY
JAMES W. WEIMER ET UX * CIVIL
* DOCKET 38 PAGE 132
* CASE NO. 92 CV 10821

INDEX

Clerk's Memorandum With Notations..... 1
Order For Appeal..... 2
Certificate Of Notice..... 3 and 4
Petition For Appeal..... 5 thru 11
Notice Of Change Of Address Of Thomas J. Gisriel... 12 and 13
Proceedings Before The Zoning Commissioner And The Board Of Appeals Of Baltimore County..... 14 thru 16
Notice Of Filing Of Record And Appellants' Memorandum..... 17 thru 33
Opinion And Order (TJB)..... 34 thru 36
Transcript For Hearing Before The County Board Of Appeals Of Baltimore County..... 37
Correspondence And Notice Of Appeal To The Court Of Special Appeals Of Maryland..... 38 thru 40
Clerk's Correspondence And Correspondence..... 41 thru 43
Order From The Court Of Special Appeals To Proceed Without A Prehearing Conference..... 44

EXHIBITS UNDER SEPARATE COVER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY APPEAL

IN THE MATTER OF THE
APPLICATION OF JAMES W.
WEIMER, ET UX FOR A VARIANCE
ON PROPERTY LOCATED ON THE
NORTH SIDE OF BEACHWOOD ROAD,
1400' WEST OF THE CENTERLINE
OF LYNHURST ROAD (4116
BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

ATTORNEYS
Thomas J. Gisriel
22 W. Allegheny Ave, Ste 400
21204 938-8800

CASE ASSIGNMENT

#92-187-A

pl: M. 11/1/93

- 1) Nov. 20, 1992 Rondalyn Rakowski's Order for Appeal for the Order of the Baltimore County Board of Appeals, fd.
- 2) Nov. 23, 1992 Certificate of Notice, fd.
- (3) Dec. 1, 1992 Appellant's Petition for Appeal, fd.
- ps (4) Dec. 17, 1992 Transcript of Record, fd.
- ps (5) Dec. 31, 1992 Notice of Filing of Record, fd. Copy sent.
- (kv)(6) Feb. 1, 1993 - Appellant's memorandum, fd.
- April 14, 1993 Hon. Thomas J. Bollinger. Hearing had testimony taken. Court's written opinion to be filed.
- PH(7) Aug 12, 1993 Opinion and Order of Court Affirming the grant by the County Board of Appeals, fd. (TJB)
- * mr (8) SEpr. 3, 1993 Pltff's Order entering an appeal to the Court of Special Appeals of Maryland, fd. (Docket 6, Folio 198)
- * ps (9) October 6, 1993 Order of Court from the Court of Special Appeals that the above captioned appeal proceed without a Prehearing Conference, fd. (Hon. Paul E. Alpert)

COSTS

RECEIVED
BALTIMORE COUNTY BOARD OF APPEALS
SEP 10 1993

Docket 38 Page 132 Case 92CV 10821

8/11/93 - CE Affirmed by Circuit Court.
(Judge Thomas J. Bollinger)
Case No. 92-187-A

IN THE MATTER OF * IN THE
JAMES WEIMER, ET UX * CIRCUIT COURT
FOR A VARIANCE ON PROPERTY * FOR BALTIMORE COUNTY
ON BEACHWOOD ROAD, ETC. * CASE NO. 92 CV 10821
* * * * *

OPINION AND ORDER

This matter comes before this Court on Appellant's appeal from a decision rendered by the County Board of Appeals of Baltimore County granting Appellee's requested variance. In reviewing the decision of an administrative agency, this Court is governed by the Annotated Code of Maryland, State Government §§10-201 et seq. §10-215(g) sets forth the grounds by which a reviewing court may remand, affirm, reverse or modify an agency decision.

A reviewing court may modify or reverse a decision "if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision of the agency: ... (iv) is affected by any other error of law; (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or (vi) is arbitrary or capricious. §10-215(g)(3)(iv-vi).

A reviewing court may, and should, examine facts found by the agency. If evidence is found to support the fact in the record, this Court has no power to substitute its assessment for

the agency's. Commissioner, Baltimore City Police Dep't v. Cason, 34 Md. App. 487, cert. denied, 280 Md. 728 (1977). A reviewing court may, and should, examine the conclusions the agency reached to determine whether reasoning minds could reasonably reach the agency conclusion from the facts in the record. It is the agency's province to resolve conflicting evidence, even as to drawing inferences in light of inconsistency. Bullock v. Pelham Wood Apts., 283 Md. 505 (1978).

The reviewing court must afford the presumption of validity to the agency's decision. Id. Only if the court should find that substantial rights of a petitioner for review have been prejudiced by one or more of the causes specified then it is the function of the court to reverse or modify the order. Bernstein v. Real Estate Comm'n., 221 Md. 221 (1959), appeal dismissed, 363 U.S. 419 (1960).

This Court has reviewed the transcript of record as well as memorandum filed by Appellant and Appellees, and considered arguments presented at a hearing. As trier of fact, it is the Board's responsibility to weigh all the evidence presented to it and rule accordingly. This Court's responsibility is to ensure that the Board's decision is supported by competent, material and substantial evidence. It is this Court's finding that the Board addressed the issues presented and that there was substantial evidence to support the Board's decision.

Accordingly, it is this 11th day of August, 1993, by the Circuit Court for Baltimore County, ORDERED that the grant by the County Board of Appeals for Baltimore County of a variance to Appellees is hereby AFFIRMED.

Thomas J. Bellinger
THOMAS J. BELLINGER, JUDGE

Copies sent to:

Mr. and Mrs. James W. Weimer
4116 Beachwood Road
Baltimore, MD 21222

Thomas J. Gisriel, Esquire
22 W. Allegheny Ave., #400
Towson, MD 21204

County Board of Appeals for
Baltimore County (Case No. 92-187-A)

3

IN THE MATTER OF THE APPLICATION OF JAMES W. WEIMER, ET UX FOR A VARIANCE ON PROPERTY LOCATED ON THE NORTH SIDE OF BEACHWOOD ROAD, 1400' WEST OF THE CENTERLINE OF LYMBURST ROAD (4116 BEACHWOOD ROAD) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY FOR BALTIMORE COUNTY Case No. 38/132/92CV10821

APPELLANT'S MEMORANDUM

Rondalyn Rakowski, Appellant, respectfully submits this Memorandum pursuant to Rule B12 of the Maryland Rules of Procedure.

I. Statement of the Case

This case is an appeal from the October 21, 1992 decision of the County Board of Appeals of Baltimore County to grant the request of Mr. and Mrs. James W. Weimer for a variance from Section 400.1 of the Baltimore County Zoning Regulations to permit a screenhouse as an accessory structure to be located in the front yard of their property located at 4116 Beachwood Road. The Appellant is Rondalyn Rakowski who resides at 4118 Beachwood Road, an adjoining property.

Section 400.1 of the Baltimore County Zoning Regulations states in pertinent part:

Accessory buildings in residential zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than forty percent (40%) thereof. In no case shall it be located less than two and one-half feet from any side or rear lot lines, except that two private garages may be built on a common party wall straddling the side interior property line if all other requirements are met.

2

It is undisputed that the screenhouse in this case is located in the front yard of 4116 Beachwood Road, and therefore, is an accessory structure which is not permitted by Section 400.1 of the Baltimore County Zoning Regulations. The Weimers sought a variance to permit them to have the screenhouse on their property, despite the provisions of Section 400.1.

Section 307.1 of the Baltimore County Zoning Regulations states, in part:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Any order of the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

On December 3, 1991, the Deputy Zoning Commissioner of Baltimore County granted the Weimers' request for a zoning variance. Ms. Rakowski appealed that decision to the Baltimore County Board of Appeals, which in an opinion dated October 21, 1992, affirmed the grant of the variance.

II. Statement of Facts

In September, 1991, Mr. and Mrs. James W. Weimer employed their nephew, Greg Hribar, to take down an old screenhouse located in their front yard and construct a new one. (Transcript, hereafter "T." 12). The Weimers did not obtain any permit from the County to take down the old screenhouse or build the new screenhouse. (T. 10). In approximately October, 1991, the Weimers received a stop-work order on the screenhouse. (T. 13). Thereafter, they applied for the variance to permit them to complete construction of the screenhouse.

The original screenhouse was built in 1972. (T. 12). There is some confusion regarding the size of the original screenhouse. Mr. Hribar has testified that the original screenhouse was 7' X 14'. (T. 18). Mr. Weimer has testified that the old screenhouse was 12' X 14'. (T. 9).

There is also a dispute regarding the size of the new screenhouse and whether it is larger than the old screenhouse. Mr. Hribar has testified that the new screenhouse is 14' X 12'. (T. 43). Nonetheless, he has testified that it is the same size as the old screenhouse which he testified was 7' X 14'. (T. 18). Mr. Weimer testified that the new screenhouse is the same size as the old screenhouse. (T. 13). Ms. Rakowski has testified that the new screenhouse is larger than the old screenhouse, and that the dimensions of the new screenhouse are 16' plus X 12'. (T. 24-25).

3

A property survey introduced into evidence also indicated that the dimensions of the new screenhouse are 16' plus X 12'. (Protestant's Exhibit No. 3).

In its Opinion, the Baltimore County Board of Appeals made no findings of fact regarding the size of the two screenhouses.

The evidence regarding the distance of the screenhouse from the property line dividing the Weimer and Rakowski properties is also disputed. Ms. Rakowski has testified that the distance from the property line to the screenhouse is 2 feet and 1/16 of an inch. (T. 25). The property survey indicates that the distance from the property line to the screenhouse is 2.16 feet. (Protestant's Exhibit No. 3). Mr. Hribar has testified that the distance from the property line to the screenhouse is 24 inches. (T. 45). The Board of Appeals made reference to Ms. Rakowski's testimony at page 2 of its Opinion, but made no findings of fact on this issue. All testimony indicated that the screenhouse is less than two and one-half feet from the property line. The Board made no reference to the fact that Section 400.1 of the Baltimore County Zoning Regulations permits an accessory structure to be no closer than two and one-half feet from the side lot line.

The Weimers' screenhouse is the only screenhouse in the neighborhood between the various houses and the water. (T. 10-11). There are no comparable structures to this screenhouse in the neighborhood facing the water. (T. 14). The testimony indicated that the lack of a screenhouse on the various other properties in the neighborhood did not cause any practical difficulty for those

4

persons in using their property and that the neighbors suffered no unreasonable hardship from the lack of a screenhouse. (T. 29-30).

III. Argument

A. The Board Of Appeals Lacks The Power To Grant The Requested Variance

In Section 307.1 of the Baltimore County Zoning Regulations, the Baltimore County Council granted the Zoning Commissioner and the County Board of Appeals power to grant certain variances. That Section gives the Board of Appeals and the Zoning Commissioner the power to grant variances to height, area, off-street parking, or sign regulations. That provision, however, also limits the authority of the Zoning Commissioner and the Board of Appeals to grant variances. Section 307.1 specifically states: "They shall have no power to grant any other variances."

The Regulation from which the variance is granted in this matter is Section 400.1, Accessory Buildings in Residence Zones. The County Council has codified this provision within Article 4 of the Baltimore County Zoning Regulations entitled "Special Regulations."

The County Council has specifically designated certain regulations as height and area regulations. (See, for example, Article 3, Section 1A01.3, and Section 1B01.2). The Regulation at issue in this case, Section 400.1, is not designated as a height and area regulation by the Baltimore County Council, and is not

5

comparable to the regulations it has so designated. Section 400.1 is also not analogous in terms and effect to height and area regulations.

The County Council has designated an entire section, Section 409, for off-street parking. Obviously, the Regulation at issue in this case has nothing to do with off-street parking.

The County Council has also designated an entire section, Section 413, to deal with signs. Again, the Regulation involved in this case has nothing whatsoever to do with signs.

The Board of Appeals has not been given the authority to grant the variance requested in this case. The County Council has specifically stated that the Board shall not have the authority to grant variances other than those listed in the Regulations. Therefore, the Board's grant of the variance in this case must be reversed. This issue was argued to the County Board of Appeals (T. 4-5, 46-47). The Board of Appeals, however, chose to ignore this issue and failed to address it in its opinion.

Pursuant to Article 25A, Section 5(U), this Court has the power to reverse a decision of the Board of Appeals if the Board's decision "is not in accordance with law." Where, as is the case here, the question presented to the Circuit Court is a question of law, the Court's review is expansive and this Court may substitute its judgment for that of the administrative agency. *Harford County v. McDonough*, 74 Md. App. 119 (1988); *Gray v. Anne Arundel County*, 73 Md. App. 301, 309 (1987).

6

In this case, the Board of Appeals has clearly exceeded the authority granted it by the Baltimore County Council. Accordingly, the Board of Appeals' grant of a variance in this case is not in accordance with law and must be reversed.

B. The Board Of Appeals Failed To Specify The Reasons For Its Decision And Failed To Make The Findings Of Fact That Are Required

The Board of Appeals based their grant of the variance in this case of two provisions, Section 307.1 and Section 307.2. Both of these provisions and Article 25A, Section 5(U) of the Maryland Code require the Board to make specific findings of fact to support the granting of a variance, and to state the reasons for its decision.

Article 25A, Section 5(U) of the Maryland Code states that: "... upon any decision by the County Board of Appeals, it shall file an opinion which shall include a statement of facts found and the grounds for its decision."

In its Opinion in this matter, the Board of Appeals failed to make the required findings of fact and failed to state the reasons for its decision. The Board merely concluded:

The testimony and the exhibits indicate that the screenhouse is merely a continuation of the site being used for a screenhouse which has existed on the property for at least twenty years without a complaint. In addition, said testimony and exhibits are sufficient to indicate to the Board that Sections 307.1, 307.2, and 500.14 of the B.C.Z.R. have been complied with.

(Opinion at p. 2).

7

This conclusion is simply inadequate. The required findings for Sections 307.1 and 307.2 will be discussed separately below.

1. Section 307.1

Section 307.1 of the Baltimore County Zoning Regulation requires that "any order of the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance." Section 307.1 requires the Board of Appeals to make findings of fact setting forth and specifying the reason or reasons for its decision with regard to specific issues, which will be discussed in sub-headings below.

a. The special circumstances or conditions which purportedly exist or are peculiar to the land or structure which is the subject of the variance request

The Board made no finding that there were any special circumstances or conditions with regard to the property involved in this request to justify the grant of a variance. The only finding of fact which could conceivably fit within this requirement is the fact that the screenhouse had existed since 1972. This, however, cannot be the basis for the granting the variance because it was created by the Weimers. Where the circumstance upon which an applicant for a variance relies to show hardship has been caused or created by the property owner or his predecessor in title, the

hardship is self-created and will not be the basis for granting a variance. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417 (1977).

b. The practical difficulty or unreasonable hardship that would result from strict compliance with the zoning regulation

To prove practical difficulty in order to obtain a variance, a party must meet the following criteria:

1. Whether the strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
2. Whether the grant would do substantial injustice to the applicant, as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

The Board of Appeals plainly made no findings of fact nor stated any reasons for its decision on these issues. Indeed, there is not sufficient evidence in the record to enable the Board to find in favor of the Weimers on these issues.

Every other property owner in the area complies with the requirement that there be no accessory structures such as a screenhouse in their front yard. All of these other property owners are able to use their property. Lack of a screenhouse would

clearly not unreasonably prevent the Weimers from using their property for a permitted purpose. For the same reason, it would not create a substantial injustice for the Weimers to comply with the provision. Finally, it certainly is not in the spirit of an ordinance which prevents the placement of accessory structures in front yards to allow such an accessory structures in the Weimers' front yard.

In order to prove undue hardship, an applicant must meet the following three criteria:

1. The applicant must be unable to secure a reasonable return or make any reasonable use of his property.
2. The difficulties or hardships must be peculiar to the subject property in contrast with other properties in the zoning district.
3. The hardship must not be the result of the applicant's own actions.

Anderson v. Board of Appeals, Town of Chesapeake, supra.

Again, the Board of Appeals has simply failed to make any findings of fact or statements of reasons for its decisions on these issues. Also, the record would not support any such findings in favor of the Weimers.

The Weimers could use their property as a residence without the screenhouse, just as all their other neighbors do. Similarly, there are no hardships the Weimers would suffer which are peculiar to their property if they, like their neighbors, were unable to erect the screenhouse between their residence and the water. To

the degree the Weimers suffer any hardship at all, it is because of their own actions in constructing the screenhouse without first obtaining permits.

c. How the variance is granted in strict harmony with the spirit and intent of the regulation for which the variance is granted

The Board of Appeals made no findings of fact on this issue, and failed to state a reason why it thought granting the variance was in harmony with the Regulation. Obviously, the granting of permission to erect an accessory structure such as a screenhouse in the Weimers' front yard is not in harmony with the spirit or intent of the Regulation which prohibits the erection of accessory structures in front yards.

2. Section 307.2

The Board of Appeals also claims to have relied on Section 307.2 of the Baltimore County Zoning Regulations in granting the Weimers a variance. Section 307.2 authorizes the Board to grant certain variances in the Chesapeake Bay Critical Areas contained within Baltimore County. This Section also requires that any order granting the variance pursuant to its authority shall contain findings of fact which shall include the following:

1. That special conditions or circumstances exist that are peculiar to the land or structure within the Critical Area of the County;

2. That strict compliance with the Critical Area regulations would result in practical difficulty, unreasonable hardship, or severe economic hardship;

3. That strict compliance with the Critical Area regulations will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County;

4. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area regulations to other lands or structures within the Critical Area of the County;

5. That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property;

6. That the granting of a variance will be in harmony with the general spirit and intent of the Critical Area regulations of the County; and

7. That the variance conforms to the requirements as stated in Section 500.14 B.C.Z.R.

Again, no such findings have been made by the Board of Appeals in its Opinion. Moreover, the record in this matter would not support the findings necessary to grant a variance under Section 307.2. The findings required under Section 307.2 are quite similar to the findings required for Section 307.1. As they have been discussed previously in this Memorandum, they will not be repeated here.

In the judicial review of an administrative action, a court may uphold an agency order only if it is sustained by the agency's

findings and for the reasons stated by the agency. Motor Vehicle Administration v. Mohler, 318 Md. 219, 231 (1990); Baltimore Heritage v. City of Baltimore, 316 Md. 109, 113 (1989). The reviewing court may not uphold an agency's decision if a record of the facts on which the agency acted or statement of reasons for its action is lacking. Board of County Commissioners for Prince George's County v. Ziegler, 244 Md. 224, 229 (1966); Mortimer v. Howard Research, 83 Md. App. 432 (1990).

Without a reasoned analysis, a reviewing court cannot determine the basis of an agency's action. In such an instance, the case should be remanded for the purpose of having the deficiencies supplied. Board of County Commissioners for Prince George's County v. Ziegler, supra, 244 Md. App. 229; Mortimer v. Howard Research, supra.

For the reasons set forth above, the Baltimore County Board of Appeals lacks the authority to grant the variance requested in this matter, and therefore, this case should simply be reversed. Moreover, even if the Board has the authority to grant the requested variance, there was no competent and material evidence in the record to support the grant of the variance. Therefore, the grant of the variance should be reversed. If this Court should decide, however, that the Board of Appeals does have authority to grant the variance requested, and chooses not to review the record searching for evidence to support the Board's decision, this Court should remand this matter to the County Board of Appeals for the findings of fact and statements of reasons for the granting of the

variance which are required by Article 25A, Section 5(U) of the Maryland Code, and Sections 307.1 and 307.2 of the Baltimore County Zoning Regulations.

C. The Variance Granted Violates The Minimum Set-Back For An Accessory Structure From The Side Lot Line

Section 400.1 of the Baltimore County Zoning Regulations states in part that: "In no case shall they [accessory buildings] be located less than two and one-half feet from any side or rear lot lines...."

In its Opinion, the Board noted that Ms. Rakowski had testified that the screenhouse in this matter was 2 feet and 1/16 inch from her property line. The only other evidence in the record regarding this issue is the testimony of Greg Bribar that the screenhouse is 24 inches from the property line (T. 45), and that the screenhouse is 2.16 feet from the property line (Protestant's Exhibit No. 3).

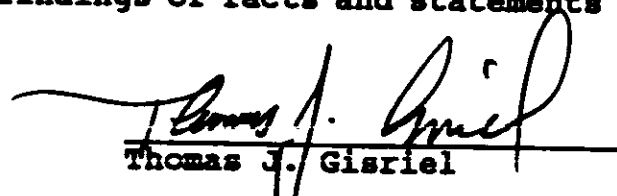
Again, the Board of Appeals made absolutely no findings of fact on this issue. There is a complete absence of any evidence in the record which would support a finding that the screenhouse is at least two and one-half feet from the property line as is required by Section 400.1 of the Baltimore County Zoning Regulations.

In light of the fact that the variance as granted violates the Baltimore County Zoning Regulations by allowing an accessory structure closer than 2 and 1/2 feet from the property line, that decision is contrary to law and should be reversed.

IV. Conclusion

The decision of the Baltimore County Board of Appeals in this matter is virtually a textbook case of what an administrative agency should not do. It has purported to grant a zoning variance which it lacks the authority to grant under Section 307.1 of the Baltimore County Zoning Regulations. The variance it has granted permits an accessory structure too close to the side lot line in violation of Section 400.1 of the Baltimore County Zoning Regulations. Moreover, the Board of Appeals failed to make the findings of fact and statements of their reasons as required by Section 307.1 and Section 307.2 of the Baltimore County Zoning Regulations and Article 25A, Section 5(U) of the Annotated Code of Maryland. Finally, the Board's decision is unsupported by competent, material and substantial evidence.

Accordingly, Appellant Rondalyn Rakowski requests that this court reverse the October 21, 1992 Opinion and Order of the Baltimore County Board of Appeals in this matter, or, in the alternative, to remand this matter to the Baltimore County Board of Appeals for appropriate findings of facts and statements of reasons for its conclusion.


THOMAS J. GISZRIEL
HODES, UMAN, PESSIN & KATZ, P.A.
22 West Allegheny Avenue
Suite 400
Towson, Maryland 21204
(410) 938-8500
Attorneys for Appellant,
Rondalyn Rakowski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of February, 1993, a copy of the foregoing Appellant's Memorandum was mailed, postage prepaid, to: Mr. and Mrs. James W. Weimer, 4116 Beachwood Road, Baltimore, Maryland 21222; Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, and County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

Thomas J. Gisriel
Thomas J. Gisriel

16

HODES, ULMAN, PESSIN & KATZ, P.A.

Michael C. Hodes
Louis Jay Ulman
David N. Pessin
Gerald M. Katz
Nathan N. Berlin
Richard B. Schrebnick
Robert N. Kiburg
David Rorinsky

ATTORNEYS AT LAW
22 WEST ALLEGHENY AVENUE
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(410) 825-0117 Facsimile

10480 LITTLE PATENT PARKWAY
SUITE 1000
COLUMBIA, MARYLAND 21044
(410) 746-3200
(301) 996-1717 D.C. Direct
(410) 740-3095 Facsimile
OF Counsel
Allen D. Greif
Alan M. Foreman

February 1, 1993

HAND DELIVERED

Ms. Suzanne Mensch, Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bowley Avenue
Towson, MD 21204

Re: In the Matter of The Application of James W. Weimer, Et Ux, for a Variance on Property Located on the North Side of Beachwood Road, 1400' West of the Centerline of Lynchwood Road (4116 Beachwood Road) 15th Election District, 7th Councilmanic District
Case No. 38/132/92CV10821

Dear Ms. Mensch:

Enclosed please find an original and one copy of Appellant's Memorandum for filing in the above-captioned case.

Please date and time stamp the copy and return it to our messenger.

Thank you for your attention in this matter.

Very truly yours,

Thomas J. Gisriel
Thomas J. Gisriel

TJG/rsl
Enclosure

cc: Mr. and Mrs. James W. Weimer
Michael B. Sauer, Esquire
County Board of Appeals

RECEIVED
FEB 2 1993
CLERK OF COURT

IN THE MATTER OF THE
APPLICATION OF JAMES W.
WEIMER, ET UX FOR A VARIANCE
ON PROPERTY LOCATED ON THE
NORTH SIDE OF BEACHWOOD ROAD,
1400' WEST OF THE CENTERLINE
OF LYNHURST ROAD (4116
BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Case No. 38/132/92CV10821

NOTICE OF CHANGE OF ADDRESS

Please take notice that the address of Thomas J. Gisriel, counsel for appellant RONDALYN RAKOWSKI has changed. Mr. Gisriel's new address is HODES, ULMAN, PESSIN & KATZ, P.A., 22 WEST ALLEGHENY AVENUE, SUITE 400, TOWSON, MARYLAND 21204.

Thomas J. Gisriel
Thomas J. Gisriel

Hodes, Ulman, Pessin & Katz, P.A.
22 West Allegheny Avenue
Suite 400
Towson, Maryland 21204
(410) 938-8800

Attorney for Rondalyn Rakowski

RECEIVED
FEB 5 1993
CLERK OF COURT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January, 1993, a copy of the foregoing Notice of Change of Address was mailed first-class, postage prepaid to:

Mr. and Mrs. James W. Weimer
4116 Beachwood Road
Baltimore, Maryland 21222

Michael B. Sauer, Esquire
c/o County Board of Appeals
Room 49
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

County Board of Appeals
Room 49
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Thomas J. Gisriel
Thomas J. Gisriel

IN THE MATTER OF THE
THE APPLICATION OF
JAMES W. WEIMER, ET UX
FOR A VARIANCE ON PROPERTY
LOCATED ON THE NORTH SIDE OF
BEACHWOOD ROAD, 1400' WEST OF
THE CENTERLINE OF LYNHURST
ROAD (4116 BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
RONDALYN RAKOWSKI, PLAINTIFF
ZONING CASE NO. 92-187-A

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Doc. No. 38
Folio No. 132
File No. 92-CV-10821

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Judson H. Lipowitz, Harry E. Buchheister, Jr., and John G. Disney, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

No. 92-187-A

Petition for Variance filed by Mr. and Mrs. James W. Weimer to permit an accessory structure in the front yard in lieu of the required rear yard.

November 9 Certificate of Posting of property.

November 7 Publication in newspapers.

November 18 Comments of Baltimore County Zoning Plans Advisory Committee.

November 26 Hearing held on Petition by the Deputy Zoning Commissioner.

James W. Weimer, et ux, Case No. 92-187-A
File No. 92-CV-10821

December 3, 1991 Order of the Deputy Zoning Commissioner GRANTING Petition for Variance with restrictions.
December 31 Notice of Appeal received from Michael Gisriel, Esquire and Thomas Gisriel, Esquire on behalf of Ms. Rondalyn Rakowski, Protestant/Appellant.
June 11, 1992 Hearing before the Board of Appeals.
October 21 Opinion and Order of the Board GRANTING requested variance.
November 20 Order for Appeal filed in the Circuit Court for Baltimore County by Thomas J. Gisriel, Esquire on behalf of Ms. Rondalyn Rakowski.
November 25 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Mr. Gisriel.
November 23 Certificate of Notice sent to interested parties.
December 17 Transcript of testimony filed.

Petitioner's Exhibit No. 1-Photo of property set on bank
2-Photo of new screen house
3-Photo of " " "
4-Photo of old screen house
5-Balto. Co. Bldg. Permit B114738 1/7/92
6-Photo of rear property of Rakowski
7-Photo of side view " " "
8-Drawing of screen house dimensions

Protestant's Exhibit No. 1-Photo of removed screen house
2-Photo of electric line to screen house
3-Document of property survey 1-23
4-Photo of fence next to screen house
5-Photo of " " "
6-Flood plain insurance map

December 17 Record of Proceedings filed in the Circuit Court for Baltimore County.

James W. Weimer, et ux, Case No. 92-187-A
File No. 92-CV-10821

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,

Linda M. Kuszmaul
Linda M. Kuszmaul, Legal Secretary
County Board of Appeals, Room 49
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204 (301) 887-3180

cc: Thomas J. Gisriel, Esquire
Mr. and Mrs. James W. Weimer

IN THE MATTER OF THE
APPLICATION OF JAMES W.
WEIMER, ET UX FOR A VARIANCE
ON PROPERTY LOCATED ON THE
NORTH SIDE OF BEACHWOOD ROAD,
1400' WEST OF THE CENTERLINE
OF LYNHURST ROAD (4116
BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Case No. 38/132/92CV10821

PETITION FOR APPEAL

Rondalyn Rakowski, appellant, pursuant to Rule B2, petitions the Court regarding the Order of the Baltimore County Board of Appeals in Case No. 92-187-A issued on October 21, 1992, and says:

1. On October 21, 1992, the Baltimore County Board of Appeals ("Board of Appeals") ordered that the Petition of James W. Weimer, et ux. for a variance for an accessory structure (screen house) in the front yard in lieu of the required rear yard be granted, affirming the December 3, 1991 decision of the Deputy Zoning Commissioner.

2. In so ruling, the Board of Appeals reasoned that the "...testimony and exhibits are sufficient to indicate to the Board that Sections 307.1, 307.2 and 500.14 of the BCZR [Baltimore County Zoning Regulations] have been complied with."

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CLERK OF COURT

Case No. 92-187-A James W. Weimer, et ux

3

3) Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the facts that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this appeal. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of DEPRM as more fully described in the aforesaid attachment.

After reviewing all the testimony, exhibits and argument, the Board is of the opinion that the relief requested in the Petition submitted in compliance with the plat submitted should be granted and will issue an order granting the request.

ORDER

IT IS THEREFORE this 27 day of October, 1992 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance for an existing accessory structure (screen house) in the front yard in lieu of the required rear yard be and the same is hereby GRANTED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Judson H. Lipowitz, Chairman

Harry E. Buchheister, Jr.

John G. Disney



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

October 21, 1992

Michael Gisriel, Esquire
Thomas J. Gisriel, Esquire
Gisriel & Gisriel
210 E. Lexington Street
Baltimore, Maryland 21202

Re: Case No. 92-187-A (James W. Weimer, et ux)

Gentlemen:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,

LindaLee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Ms. Rondalyn Rakowski
Mr. and Mrs. James W. Weimer
P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director
Zoning Administration

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
N/S Beachwood Road, 1400' W * COUNTY BOARD
of the c/l of Lynhurst Road, * OF APPEALS
(4116 Beachwood Road) * OF BALTIMORE COUNTY
15th Election District *
7th Councilmanic District *

Case No.

ORDER FOR APPEAL

Ms. Rondalyn Rakowski, 4118 Beachwood Road, Baltimore, Maryland 21222, orders an appeal from the December 3, 1991 order of the Deputy Zoning Commissioner of Baltimore County in Case No. 92-187-A granting the variance sought by petitioners Mr. and Mrs. James W. Weimer.

Michael Gisriel

Thomas J. Gisriel

Gisriel & Gisriel
210 E. Lexington Street
Baltimore, Maryland 21202
(410) 539-0513

Attorneys for Rondalyn Rakowski

RECEIVED
12/3/91
ZONING OFFICE

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 31st day of December, 1991, a copy of the foregoing Order for Appeal was mailed first class, postage prepaid to:

Mr. and Mrs. James W. Weimer
4116 Beachwood Road
Baltimore, Maryland 21222

Phyllis C. Friedman, Esquire
People's Counsel
Room 223, Court House
Towson, Md. 21204

Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County
111 West Chesapeake Avenue
Towson, MD 21204

123t

Thomas J. Gisriel

- 2 -

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
N/S Beachwood Road, 1400' W * DEPUTY ZONING COMMISSIONER
of the c/l of Lynhurst Road, * OF BALTIMORE COUNTY
(4116 Beachwood Road) *
15th Election District *
7th Councilmanic District *
James W. Weimer, et ux * Case No. 92-187-A
Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure (screen house) to be located in the front yard in lieu of the required rear yard in accordance with Petitioner's Exhibit 1.

The Petitioners appeared and testified. Appearing as a Protestant in the matter was Rondalyn Rakowski, adjoining property owner.

Testimony indicated that the subject property, known as 4116 Beachwood Road, consists of 9,750 sq.ft. zoned D.R. 5.5 and is improved with a single family dwelling, garage, and screenhouse. This property is located within the Chesapeake Bay Critical Areas on Back River. Testimony indicated Petitioners filed the instant Petition as a result of a complaint filed with the Zoning Enforcement Division of the Office of Zoning Administration and Development Management regarding the size and location of the subject screenhouse. Mr. Weimer testified the screenhouse was built as a replacement structure for an old pavilion which was constructed in 1972 and had become an eyesore. In support of his testimony, Petitioner submitted letters from four of his neighbors, including the adjoining property owner on the opposite side, indicating the original structure existed on the site for almost 20 years prior to its replacement and that they have no objections to the new structure. Testimony indicated that Mr. Weimer

was unaware that a permit would be required for replacing the old building and that he would have left the old structure in place had he known there would be problems.

Rondalyn Rakowski appeared and testified as a Protestant in the matter. Ms. Rakowski testified that she lives with her parents on the adjoining property known as 4118 Beachwood Road. Ms. Rakowski testified that the subject screen house is located 1.8 feet from the side property line adjoining her parents' property and that it is approximately one-third larger than the original building. Ms. Rakowski further testified that the subject screenhouse was poorly built and creates a hazardous condition too close to her property.

In light of the subject property existing within the Chesapeake Bay Critical Areas, Sections 307.1, 307.2 and 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.) must also be examined.

The evidence presented indicates the subject screenhouse was built as a replacement structure for the original building which existed prior to the effective date of said regulations. In accordance with said regulations, the subject screenhouse is a permitted continuation of existing permitted uses provided there is no expansion or intensification of its use. The testimony and evidence presented indicates the screenhouse is merely a continuation of the original use as a pavilion which existed on the property for nearly 20 years without prior complaint.

After due consideration of the testimony and evidence presented, in the opinion of the Zoning Commissioner, the relief requested sufficiently complies with the requirements of Sections 307.1, 307.2 and 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.) and should therefore be granted. There is no evidence in the record that the subject variance

would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management has submitted recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Areas requirements to:

- 1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- 2) Conserve fish, wildlife, and plant habitat; and
- 3) Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of the Department of Environmental Protection and Resource Management as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 27th day of December, 1991 that the Petition for Zoning Variance from Section 400.1 of the Baltimore County Zoning Regula-

tions (B.C.Z.R.) to permit an existing accessory structure (screenhouse) to be located in the front yard in lieu of the required rear yard, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

IT IS FURTHER ORDERED that the Petitioner shall comply fully and completely with all requirements and recommendations of the Department of Environmental Protection and Resource Management, as set forth in their comments dated November 26, 1991, attached hereto and made a part hereof.

TWK:bjs

Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 12/3/91
By [Signature]

ORDER RECEIVED FOR FILING
Date 12/3/91
By [Signature]

ORDER RECEIVED FOR FILING
Date 12/3/91
By [Signature]

ORDER RECEIVED FOR FILING
Date 12/3/91
By [Signature]

- 2 -

- 3 -

- 4 -

3. Section 307.1 of the BCZR states, in part:

The zoning commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. ... Any order of the zoning commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

4. The regulation from which the variance was granted, Section 400.1 Accessory Buildings in Residence Zones, is not a height, area, off-street parking, or sign regulation. The Baltimore County Council has included this regulation within those it has named "Special Regulations".

5. In Section 307.1 the County Council limited the authority of the Zoning Commissioner and the Board of Appeals to grant variances to height, area, off-street

- 2 -

parking, or sign regulations, and specifically stated that "They shall have no power to grant any other variances".

6. The Deputy Zoning Commissioner and the Board of Appeals have no power to grant a variance to a Special Regulation, such as the regulation of accessory buildings at issue in this case.

7. Section 307.1 requires that "Any Order of the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

8. The Orders of the Deputy Zoning Commissioner and of the Board of Appeals in this matter failed to make findings of fact setting forth and specifying the reason or reasons for its decision with regard to:

a. the special circumstances or conditions which purportedly exist that are peculiar to the land or structure which is the subject of the variance request

b. the practical difficulty or unreasonable hardship that would result from strict compliance with the zoning regulation

c. how the variance granted is in strict harmony with the spirit and intent of the regulation for which the variance is granted.

- 3 -

9. Section 307.2 of the BCZR, which was cited by the Order of the Board of Appeals as a ground for its decision granting the variance, requires that any Order granting a variance under its authority shall contain findings of fact which shall include the following:

1. That special conditions or circumstances exist that are peculiar to the land or structure within the critical area of the county;

2. That strict compliance with the critical area regulations would result in practical difficulty, unreasonable hardship or severe economic hardship;

3. That strict compliance with the critical area regulations will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the critical area of the county;

4. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by the critical area regulations to other lands or structures within the critical area of the county;

5. That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any

- 4 -

condition relating to land or building use, either permitted or nonconforming, on any neighboring property;

6. That the granting of a variance will be in harmony with the general spirit and intent of the critical area regulations of the county; and

7. That the variance conforms to the requirements as stated in Section 500.14, B.C.Z.R.

10. The orders of the Deputy Zoning Commissioner and the Board of Appeals fail to make the findings of fact required by Section 307.2 of the BCZR.

11. Section 400.1 of the BCZR states in part that "in no case shall they [accessory buildings] be located less than 2 1/2 feet from any side or rear lot lines...".

12. The screen house for which the variance was granted in this case is less than 2 1/2 feet from the lot line of the property occupied by the appellant.

13. Appellant submits that the Order of the Board of Appeals is erroneous in that:

A. The Board of Appeals has no authority pursuant to Section 307.1 BCZR to grant a variance from a special regulation such as the regulation governing accessory buildings involved in this case.

- 5 -

B. The Board of Appeals failed to make the findings of fact required by Section 307.1 BCZR when it granted the variance in this matter.

C. The Board of Appeals failed to make the findings of fact required by Section 307.2 BCZR when it granted the variance in this matter.

D. The Board of Appeals granted the variance is violation of Section 400.1, which prohibits Accessory Buildings closer than 2 1/2 feet from the lot line.

E. The decision of the Board of Appeals is unsupported by competent material and substantial evidence.

WHEREFORE, Appellant Rondalyn Rakowski petitions this Court to reverse the October 21, 1992 Order of the Baltimore County Board of Appeals.

Thomas J. Gisriel

Gisriel & Brush, P.A.
Suite 400
210 E. Lexington Street
Baltimore, Maryland 21202
(410) 539-0513

Attorney for Rondalyn Rakowski

- 6 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 1992, a copy of the foregoing Petition for Appeal was mailed first-class, postage prepaid to:

Mr. and Mrs. James W. Weimer
4116 Beachwood Road
Baltimore, Maryland 21222

Michael B. Sauer, Esquire
c/o County Board of Appeals
Room 49
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

County Board of Appeals
Room 49
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

C:1513t

Thomas J. Gisriel

- 7 -

IN THE MATTER OF THE
THE APPLICATION OF
JAMES W. WEIMER, ET UX
FOR A VARIANCE ON PROPERTY
LOCATED ON THE NORTH SIDE OF
BEACHWOOD ROAD, 1400' WEST OF
THE CENTERLINE OF LYNHURST
ROAD (4116 BEACHWOOD ROAD)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Doc. No. 38
* Folio No. 132
* File No. 92-CV-1081

RONDALYN RAKOWSKI, PLAINTIFF
ZONING CASE NO. 92-187-A

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Judson H. Lipowitz, Harry E. Buchheister, Jr., and John G. Disney, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Thomas J. Gisriel, Esquire, Gisriel & Brush, P.A., Suite 400, 210 E. Lexington Street, Baltimore, Maryland 21202, Counsel for Plaintiff; Ms. Rondalyn Rakowski, 4118 Beachwood Road, Baltimore, Maryland 21222, Plaintiff; Mr. and Mrs. James W. Weimer, 4116 Beachwood Road, Baltimore, Maryland 21222, Defendants; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement - Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Linda M. Kuszmaul, Legal Secretary
County Board of Appeals, Room 49,
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204 (301) 887-3180

James W. Weimer, et ux, Case No. 92-187-A
File No. 92-CV-1081

2

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas J. Gisriel, Esquire, Gisriel & Brush, P.A., Suite 400, 210 E. Lexington Street, Baltimore, Maryland 21202, Counsel for Plaintiff; Ms. Rondalyn Rakowski, 4118 Beachwood Road, Baltimore, Maryland 21222, Plaintiff; Mr. and Mrs. James W. Weimer, 4116 Beachwood Road, Baltimore, Maryland 21222, Defendants; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement - Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on this 23rd day of November, 1992.

Linda M. Kuszmaul, Legal Secretary
County Board of Appeals, Room 49,
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204 (301) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 23, 1992

Thomas J. Gisriel, Esquire
Gisriel & Brush, P.A.
Suite 400
210 E. Lexington Street
Baltimore, Maryland 21202

Re: Case No. 92-187-A (James W. Weimer, et ux)

Dear Mr. Gisriel:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Linda Lee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Ms. Rondalyn Rakowski



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 23, 1992

Mr. and Mrs. James W. Weimer
4116 Beachwood Road
Baltimore, Maryland 21222

Re: Case No. 92-187-A (James W. Weimer, et ux)

Dear Mr. Weimer:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda Lee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

IN THE MATTER OF THE *
APPLICATION OF JAMES W. *
WEIMER, ET UX FOR A VARIANCE *
ON PROPERTY LOCATED ON THE *
NORTH SIDE OF BEACHWOOD ROAD, *
1400' WEST OF THE CENTERLINE *
OF LYNHURST ROAD (4116 *
BEACHWOOD ROAD) *
15TH ELECTION DISTRICT *
7TH COUNCILMANIC DISTRICT *
* * * * *

IN THE *
CIRCUIT COURT *
FOR *
BALTIMORE COUNTY *
Case No. *
* * * * *

ORDER FOR APPEAL

Rondalyn Rakowski, pursuant to Rule B2, orders an appeal of the order of the Baltimore County Board of Appeals in this matter (Case No. 92-187-A) issued on October 21, 1992.

The undersigned certifies that on November 20, 1992, a copy of this Order For Appeal was served on the Baltimore County Board of Appeals prior to the filing of this Order.

Thomas J. Gisriel
Thomas J. Gisriel
Gisriel & Brush, P.A.
Suite 400
210 E. Lexington Street
Baltimore, Maryland 21202
(410) 539-0513

54 8 HW 20 20 AON 26

RECEIVED
COUNTY BOARD OF APPEALS

IN THE MATTER OF *
JAMES WEIMER, ET UX *
FOR A VARIANCE ON PROPERTY *
ON BEACHWOOD ROAD, ETC. *
* * * * *

IN THE *
CIRCUIT COURT *
FOR BALTIMORE COUNTY *
CASE NO. 92 CV 10821 *
* * * * *

OPINION AND ORDER

This matter comes before this Court on Appellant's appeal from a decision rendered by the County Board of Appeals of Baltimore County granting Appellee's requested variance. In reviewing the decision of an administrative agency, this Court is governed by the Annotated Code of Maryland, State Government §§10-201 et seq. §10-215(g) sets forth the grounds by which a reviewing court may remand, affirm, reverse or modify an agency decision.

A reviewing court may modify or reverse a decision "if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision of the agency: ... (iv) is affected by any other error of law; (v) is unsupported by competent material, and substantial evidence in light of the entire record as submitted; or (vi) is arbitrary or capricious. §10-215(g)(3)(iv-vi).

A reviewing court may, and should, examine facts found by the agency. If evidence is found to support the fact in the record, this Court has no power to substitute its assessment for

the agency's. Commissioner, Baltimore City Police Dep't v. Casco, 34 Md. App. 487, cert. denied, 280 Md. 728 (1977). A reviewing court may, and should, examine the conclusions the agency reached to determine whether reasoning minds could reasonably reach the agency conclusion from the facts in the record. It is the agency's province to resolve conflicting evidence, even as to drawing inferences in light of inconsistency. Bullock v. Pelham Wood Apts., 283 Md. 505 (1978).

The reviewing court must afford the presumption of validity to the agency's decision. Id. Only if the court should find that substantial rights of a petitioner for review have been prejudiced by one or more of the causes specified then it is the function of the court to reverse or modify the order. Bernstein v. Real Estate Comm'n, 221 Md. 221 (1959), appeal dismissed, 363 U.S. 419 (1960).

This Court has reviewed the transcript of record as well as memorandum filed by Appellant and Appellees, and considered arguments presented at a hearing. As trier of fact, it is the Board's responsibility to weigh all the evidence presented to it and rule accordingly. This Court's responsibility is to ensure that the Board's decision is supported by competent, material and substantial evidence. It is this Court's finding that the Board addressed the issues presented and that there was substantial evidence to support the Board's decision.

Accordingly, it is this 11th day of August, 1993, by the Circuit Court for Baltimore County,

ORDERED that the grant by the County Board of Appeals for Baltimore County of a variance to Appellees is hereby AFFIRMED.

Thomas J. Bollinger
THOMAS J. BOLLINGER, JUDGE

Copies sent to:

Mr. and Mrs. James W. Weimer
4116 Beachwood Road
Baltimore, MD 21222

Thomas J. Gisriel, Esquire
22 W. Allegheny Ave., #400
Towson, MD 21204

County Board of Appeals for
Baltimore County (Case No. 92-187-A)

IN THE MATTER OF THE *
THE APPLICATION OF *
JAMES W. WEIMER, ET UX *
FOR A VARIANCE ON PROPERTY *
LOCATED ON THE NORTH SIDE *
BEACHWOOD ROAD, 1400' WEST OF *
THE CENTERLINE OF LYNHURST *
ROAD (4116 BEACHWOOD ROAD) *
15TH ELECTION DISTRICT *
7TH COUNCILMANIC DISTRICT *
* * * * *

BEFORE THE *
COUNTY BOARD OF APPEALS *
OF *
BALTIMORE COUNTY *
CASE NO. 92-187-A *
* * * * *

OPINION

This dispute comes before this Board from the decision of the Deputy Zoning Commissioner dated December 3, 1991. James W. Weimer was granted his request for a variance from Section 400.1 of the Baltimore County Zoning Regulations (BCZR) to permit the existing accessory structure, a screen house, to be located in the front yard in lieu of the rear yard. Mr. Weimer requested the Petition as a result of a complaint filed with the Office of the Zoning Administration and Development Management by Rondalyn Rakowski the adjoining property owner. The adjoining property is known as 4118 Beachwood Road.

The subject property is known as 4116 Beachwood Road. The owner of the property James W. Weimer, testified that the screen house being built is replacing an older screen house on the same site. The first screen house was constructed in early 1972. While removing part of the first screen house it was found that more and more of it had to be replaced due to the poor condition of the structure. Mr. Weimer hired his nephew, Greg Hribar, to build a replacement screen house at the same location as the first screen house. Construction on the new screen house was started in September of 1991.

Case No. 92-187-A James W. Weimer, et ux

Greg Hribar's testimony was the same as Mr. Weimer's except that the supports will be concreted into the ground 30", and that there will not be any permanent electrical connections.

Rita Rondalyn Rakowski, the Protester testified as to the placement of the screen house next to her property. She stated that the screen house was 2' 1/6" from her property line.

In support of Mr. Weimer's testimony, Mr. Weimer submitted letters from four of his neighbors including his next door neighbor on the opposite side of his property from the Protester. Their letters indicated that they had no objections to the replacement of the screen house and that a screen house had existed on this site for at least 20 years.

The testimony and exhibits indicate that the screen house is merely a continuation of the site being used for a screen house which has existed on the property for at least 20 years without a complaint. In addition, said testimony and exhibits are sufficient to indicate to the Board that Sections 307.1, 307.2 and 500.14 of the BCZR have been complied with.

In accordance with Section 500.14 of the BCZR, the Director of the Department of Environmental Protection and Resource Management (DEPRM) has submitted recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Area requirements to:

- 1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- 2) Conserve fish, wildlife, and plant habitat; and

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management
DATE: November 26, 1991

FROM: J. James Dieter
SUBJECT: Petition for Zoning Variance - Item 196
Weimer Property
Chesapeake Bay Critical Area Findings

SITE LOCATION

The subject property is located at 4116 Beachwood Road. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. and Mrs. James Weimer

APPLICANT PROPOSAL

The applicant has requested a variance from section 400.1 of the Baltimore County Zoning Regulations to permit "an accessory structure in the front yard in lieu of the required rear yard."

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

- "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
- Conserve fish, wildlife and plant habitat; and
- Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts" <COMAR 14.15.10.01.0>.

ORDER RECEIVED FOR FILING
Date 12/3/91
By JJD

Mr. Arnold Jablon
November 26, 1991
Page 2

REGULATIONS AND FINDINGS

- Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" <Baltimore County Code, Sec. 22-213(a)>.
Finding: The Chesapeake Bay Critical Area Program does not allow the placement of new structures within the shoreline buffer; however, as stated above, the program does allow the continuation but not necessarily the expansion of existing permitted uses. If evidence can be presented that verifies the size and location of a previously permitted structure, then it will be allowed to be rebuilt.
- Regulation: "No dredging, filling, or construction in any wetland shall be permitted. Any wetland must be adequately protected from contamination" <Baltimore County Code, Sec. 22-98>.
Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site.
- Regulation: "If a parcel or lot one-half acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to 25% of the parcel or lot" <Section 22-217(e)>.
Finding: This property appears to be within the 25% impervious surface limit. The submitted site plan does not include dimensions of the existing house; however, a site visit by this Department estimated the dimensions and found them to be within this limit.
- Regulation: "If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland of at least 15%" <COMAR 14.15.02.04 C.(5)>.

ORDER RECEIVED FOR FILING
Date 12/3/91
By JJD

Mr. Arnold Jablon
November 26, 1991
Page 3

Finding: The following plant material shall be selected from the enclosed list and planted in addition to existing vegetation to provide a 15% forested cover.

Shrub and small tree list: 2 items - ball and burlap or 2 gallon container size

Tree list: 0 items - minimum 4 foot size

Trees are an important factor in improving water quality. The roots of trees greatly improve the infiltration rate of storm water and efficiently remove nitrogen from subsurface flows of groundwater. Trees also act as both a barrier and a sponge, blocking and absorbing eroding soils and the phosphorus associated with them.

- Regulation: "The stormwater management system shall be designed so that:
(1) Development will not cause downstream property, watercourses, channels or conduits to receive stormwater runoff at a higher rate than would have resulted from a ten year frequency storm if the land had remained in its predevelopment state;
(2) Infiltration of water is maximized throughout the site, rather than directing flow to single discharge points; and
(3) Storm drain discharge points are decentralized to simulate the predevelopment hydrologic regime.
(4) There is sufficient storage capacity to achieve water quality goals of COMAR 14.15 and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state" <Baltimore County Code, Sec. 22-217(h)>.
- Finding: If this structure is the same size as a previously permitted structure, then no additional impervious surfaces are proposed, and no additional stormwater management facilities shall be required.

ORDER RECEIVED FOR FILING
Date 12/3/91
By JJD

Mr. Arnold Jablon
November 26, 1991
Page 4

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. If there are any questions, please contact Mr. David C. Flowers at 887-2904.

J. James Dieter
J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JJD:NSP:tjl

Attachment

cc: Mr. and Mrs. Weimer
4116 Beachwood Road
Baltimore, Maryland

WEIMER/MQCBCA

ORDER RECEIVED FOR FILING
Date 12/3/91
By JJD

111 West Chesapeake Avenue
Towson, MD 21204

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

December 3, 1991

887-3353

Mr. & Mrs. James W. Weimer
4116 Beachwood Road
Baltimore, Maryland 21222

RE: PETITION FOR ZONING VARIANCE
N/S Beachwood Road, 1400' W of the c/l of Lynhurst Road
(4116 Beachwood Road)
15th Election District - 7th Councilmanic District
James W. Weimer, et ux - Petitioners
Case No. 92-187-A

Dear Mr. & Mrs. Weimer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Ms. Rondalyn Rakowski
4118 Beachwood Road, Baltimore, Md. 21222

Chesapeake Bay Critical Areas Commission
Tawes State Office Building, D-4, Annapolis, Md. 21404

DEPRM

People's Counsel

File

CRITICAL
Petition for Variance #196

to the Zoning Commissioner of Baltimore County **92-187-A**

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 400.1 - to permit an accessory structure in the front yard in lieu of the required rear yard.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

JAMES W. WEIMER
(Type or Print Name)

James W. Weimer
Signature

JAMES W. WEIMER
(Type or Print Name)

James W. Weimer
Signature

JAMES W. WEIMER
(Type or Print Name)

James W. Weimer
Signature

JAMES W. WEIMER
(Type or Print Name)

James W. Weimer
Signature

JAMES W. WEIMER
(Type or Print Name)

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James W. Weimer
Signature

JAMES W. WEIMER
(Type or Print Name)

James W. Weimer
Signature

JAMES W. WEIMER
(Type or Print Name)

James W. Weimer
Signature

ORDER RECEIVED FOR FILING

Date 12/3/91

By JJD

ZONING DESCRIPTION

CRITICAL AREA

Beginning at a point on the North side of Beechwood Road, which is 50' wide at the distance of approximately 1400' west of the centerline of Lynhurst Road which is a 50' wide right-of-way, being Lot #17 in the subdivision as recorded in Baltimore County Plat Book #10, folio #123, containing 9,750 sq. ft. Also known as 4116 Beechwood Road and located in the 15th Election District.

92-187-A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15th Date of Posting: 11/15/91
Posted for: Variance
Petitioner: James W. Weimer et ux
Location of property: N/S Beachwood Rd., 1400' W of Lynhurst Rd.
Location of Sign: Beachwood Rd., approx. 1/2 mi. W of Lynhurst Rd.
Remarks: See property of Petitioner
Number of Signs: 1

CERTIFICATE OF PUBLICATION

V. MD. 7 Nov. 7, 1991
I/We, the undersigned, hereby certify that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Baltimore County, Md., once in each of 1 successive publication appearing on Nov. 7, 1991.

THE JEFFERSONIAN,

Zeke Olson

Publisher

32.83

92700

receipt

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Date: _____

Account: R-001-6150
Number: 92-187-A

Cashier Validation: _____

Please Make Checks Payable To: Baltimore County

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1574
Date of Posting: 2/9/92

Posted for: Appeal
Petitioner: James W. Weimer, et al.
Location of property: N/S Beachwood Rd., 1400' W of Lynhurst Rd.
1116 Beachwood Rd.
Location of Sign: Beachwood Rd., approx. 10' from intersection of property & highway.

Remarks: _____

Posted by: [Signature]
Number of Signs: 1

Date of return: 2/14/92

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

DATE: 11-15-91

James and Marcella Weimer
4116 Beachwood Road
Baltimore, Maryland

RE:
CASE NUMBER: 92-187-A
W/S 1400' (+/-) West of Lynhurst
4116 Beachwood Road
15th Election District - 7th Councilmanic
Petitioner(s): James W. Weimer, et al.
HEARING: TUESDAY, NOVEMBER 26, 1991 at 10:00 a.m.

Dear Petitioner(s):

Please be advised that \$ 84.83 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING ON THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

[Signature]
Lawrence E. Schmidt
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

CASE NO. 92-CV-10821
IN THE MATTER OF JAMES W. WEIMER, ET UX

RECEIVED FROM THE COUNTY BOARD OF APPEALS
EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT
FILED IN THE ABOVE-ENTITLED CASE,
AND ZONING COMMISSIONER'S FILE & EXHIBITS.

[Signature]
Clerk's Office

Date: 12/17/92

receipt

Baltimore County
Zoning Commission
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Date: 10-16-91

Account: R-001-6150
Number: H9200156

DESCRIPTION	QTY	PRICE
PUBLIC HEARING FEES	1 X	\$35.00
POSTING SIGN / ADVERTISING	1 X	\$49.83
TOTAL:		\$84.83

LAST NAME OF OWNER: WEIMER

Please Make Checks Payable To: Baltimore County
BA COMB18PA10-16-91

receipt

Baltimore County
Zoning Commission
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Date: _____

Account: R-001-6150
Number: H9200338

DESCRIPTION	QTY	PRICE
PUBLIC HEARING FEES	1 X	\$35.00
POSTING SIGN / ADVERTISING	1 X	\$49.83
TOTAL:		\$84.83

LAST NAME OF OWNER: WEIMER

Please Make Checks Payable To: Baltimore County
BA COMB18PA10-16-91

TAKEN FROM DAILY RECORD 5/25/94 ed: n

REVERSED by Court of Special Appeals 5/24/94

Remanded to Circuit Court for remand to the Board of Appeals with direction that petition for variance be denied.

Monitor for remand order from circuit court after issuance of order by Court of Special Appeals.

9/27/94 - T/C to Carol Miller of CCL. She informed me that she would give the case to the Judge (apparently the clerk overlooked this step and filed the case upon receipt of the Mandate).

[Signature]
10/93

MANDATE
Court of Special Appeals

No. 1543, September Term, 1993

Rondalyn Rakowski
v.
James W. Weimer et al.

JUDGMENT: May 24, 1994: Per Curiam filed. Judgment reversed; case remanded to the circuit court for remand to the Board of Zoning appeals with direction that the petition for the variance be denied. Appellee to pay the costs.

June 23, 1994: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for BALTIMORE COUNTY 92CV10821

Record.....	60.00
* Total *	60.00 *

In Court of Special Appeals:

Filing Record on Appeal.....	50.00
Printing Brief for Appellant.....	129.60
Portion of Record Extract--Appellant.....	255.60
* Total *	435.20 *

STATE OF MARYLAND, Set:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals this twenty-third day of June A.D. 19 94

[Signature]
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

Form CA4

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bayley Avenue
P.O. Box 8754
Towson, Maryland, 21285-8754

TO: Thomas J. Gisriel, ESq.
County Board of Appeals of Baltimore County
Office of Law
Mr. & Mrs. James W. Weimer (PP)
4116 Beachwood Rd.
Baltimore, MD 21222

RE: Hon. Jury 92 CV 10821 in The Matter Of James W. Weimer

HEARING DATE: Wednesday, April 14, 1993, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 2 Hours

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS FROM TO 20 DAYS BEFORE THE HEARING, should be directed to the attention of Irene Summers, POSTPONEMENTS WITHIN 20 DAYS OF THE HEARING, should be made to the attention of the Director of Court Assignments-Joyce Collins-887-3497.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

RECORD
93 JAN 21 AM 11:50

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

OCTOBER 26, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-187-A
W/S 1400' (+/-) West of Lynhurst
4116 Beachwood Road
15th Election District - 7th Councilmanic
Petitioner(s): James W. Weimer, et al.
HEARING: TUESDAY, NOVEMBER 26, 1991 at 10:00 a.m.

Variance to permit an accessory structure in the front yard in lieu of the required rear yard.

[Signature]
Lawrence E. Schmidt
Zoning Commissioner of
Baltimore County

cc: James and Marcella Weimer

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue

MAR 13 1992

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 92-187-A

JAMES W. WEIMER, ET UX
N/S Beachwood Rd., 1400' W of c/l
Lynhurst Rd. (4116 Beachwood Rd.)
15th Election District
7th Councilmanic District

VAR-existing accessory structure (screen house) in front yard in lieu of required rear yard.

12/3/91 - D.Z.C.'s Order GRANTING Petition with restrictions.

ASSIGNED FOR: THURSDAY, JUNE 11, 1992 AT 10:00 a.m.

cc: Mr. and Mrs. James W. Weimer Petitioners
Michael Gisriel, Esquire and - Counsel for Appellant
Thomas J. Gisriel, Esquire
Ms. Rondalyn Rakowski Appellant/Protestant
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Administration

[Signature]
LindaLee N. Kuszmaul
Legal Secretary

Yes - no



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180
Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue March 11, 1992

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 92-187-A JAMES W. WEIMER, ET UX
N/s Beachwood Rd., 1400' W of c/l
Lynhurst Rd. (4116 Beachwood Rd.)
15th Election District
7th Councilmanic District

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(screen house) in front yard in lieu
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ASSIGNED FOR: THURSDAY, JUNE 11, 1992 AT 10:00 a.m.

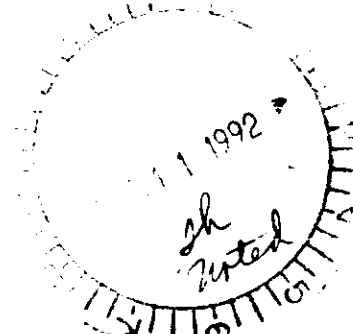
cc: Mr. and Mrs. James W. Weimer Petitioners

Michael Gisriel, Esquire and - Counsel for Appellant
Thomas J. Gisriel, Esquire

Ms. Rondalyn Rakowski Appellant/Protestant

People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning
Administration

LindaLee M. Kuszmaul
Legal Secretary



*Handwritten note: P.C. not involved
Shirley M. Dea*



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180
Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue March 11, 1992

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CASE NO. 92-187-A JAMES W. WEIMER, ET UX
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ASSIGNED FOR: THURSDAY, JUNE 11, 1992 AT 10:00 a.m.

cc: Mr. and Mrs. James W. Weimer Petitioners

Michael Gisriel, Esquire and - Counsel for Appellant
Thomas J. Gisriel, Esquire

Ms. Rondalyn Rakowski Appellant/Protestant

People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning
Administration

LindaLee M. Kuszmaul
Legal Secretary

*Handwritten note: out per Shirley
Hess 3/11/92*

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning



111 West Chesapeake Avenue
Towson, MD 21204

November 18, 1991

887-3353

Mr. & Mrs. Marcella J. Weimer
4116 Beachwood Road
Baltimore, MD 21222

RE: Item No. 196, Case No. 92-187-A
Petitioner: James W. Weimer, et ux
Petition for Variance

Dear Mr. & Mrs. Weimer:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committee Comments
Date: November 18, 1991
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,

Handwritten signature: James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning



111 West Chesapeake Avenue
Towson, MD 21204

887-3353

Your petition has been received and accepted for filing this
16th day of October, 1991.

Handwritten signature: Arnold Jablon
ARNOLD JABLON
DIRECTOR

Received By:

Handwritten signature: James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Marcella J. Weimer, et ux

Petitioner's Attorney:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: November 4, 1991
Zoning Administration and
Development Management

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Bertoldi Property, Item No. 172
Koss Property, Item No. 192
Pitts Property, Item No. 193
Weimer Property, Item No. 196/
Frey Property, Item No. 197
Goodwin Property, Item No. 198
Pettit Property, Item No. 199
McQuain Property, Item No. 200
Clement Property, Item No. 201
Shapiro Property, Item No. 203
Chaney Property, Item No. 204
Colleran Property, Item No. 207
Fisher Property, Item No. 208
Wilson Property, Item No. 211

In reference to the petitioners' request, the staff offers
no comments.

If there should be any further questions or if this office can
provide additional information, please contact Jeffrey Long in the
Office of Planning at 887-3211.

PK/JL/rdn

ITMS172/TXTROZ

Baltimore County Government
Fire Department



700 East Joppa Road, Suite 901
Towson, MD 21204-5500

OCTOBER 29, 1991

(301) 887-4500

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: JAMES W. WEIMER
Location: 4116 BEACHWOOD ROAD
Item No.: 196 Zoning Agenda: OCTOBER 29, 1991

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by
this Bureau and the comments below are applicable and required to be
corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Handwritten signature: St. John* Noted and
Planning Group Approved
Special Inspection Division Fire Prevention Bureau

JK/KEK

92-187-A NOV 3

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: October 29, 1991
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for October 29, 1991

The Developers Engineering Division has reviewed
the subject zoning items and we have no comments for
Items 172, 190, 192, 193, 194, 195, 196, 197, 198, 199,
200 and 202.

Handwritten signature: Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

92-187-A 11/26

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: November 19, 1991

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: October 29, 1991

This office has no comments for item numbers 172, 192, 194, 195, 196, 197, 198, 199, 200 and 202.

Rahee J. Famili
Rahee J. Famili
Traffic Engineer II

RJF/lvd

ZONING ENFORCEMENT
Baltimore County
Zoning Office
Towson, Maryland 21204

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer
Zoning Supervisor

FROM: James H. Thompson -LJW
Zoning Enforcement Coordinator

RE: Item No. 196
Petitioner: MARCELLA & JAMES WEIMER

VIOLATION CASE # C-92-610

LOCATION OF VIOLATION 4116 BEACHWOOD ROAD

DEFENDANT

ADDRESS

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	ADDRESS
Ms. Rhonda Lotz	4116 BEACHWOOD ROAD 21222

After the public hearing is held, please send a copy of the Zoning Commission's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

ecb/

92-187-A

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

DATE: November 26, 1991

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 196
Weimer Property
Chesapeake Bay Critical Area Findings

SITE LOCATION

The subject property is located at 4116 Beachwood Road. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. and Mrs. James Weimer

APPLICANT PROPOSAL

The applicant has requested a variance from section 400.1 of the Baltimore County Zoning Regulations to permit "an accessory structure in the front yard in lieu of the required rear yard."

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts" <COMAR 14.15.10.01.0>.

Mr. Arnold Jablon
November 26, 1991
Page 2

REGULATIONS AND FINDINGS

- 1A. Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" <Baltimore County Code, Sec. 22-213(a)>.
- 1B. Regulation: "Grandfathering. After program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances" <COMAR 14.15.02.07>.
- Finding: The Chesapeake Bay Critical Area Program does not allow the placement of new structures within the shoreline buffer; however, as stated above, the program does allow the continuation but not necessarily the expansion of existing permitted uses. If evidence can be presented that verifies the size and location of a previously permitted structure, then it will be allowed to be rebuilt.
2. Regulation: "No dredging, filling, or construction in any wetland shall be permitted. Any wetland must be adequately protected from contamination" <Baltimore County Code, Sec. 22-98>.
- Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site.
3. Regulation: "If a parcel or lot one-half acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to 25% of the parcel or lot" <Section 22-217(e)>.
- Finding: This property appears to be within the 25% impervious surface limit. The submitted site plan does not include dimensions of the existing house; however, a site visit by this Department estimated the dimensions and found them to be within this limit.
4. Regulation: "If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland of at least 15%" <COMAR 14.15.02.04 C.(5)>.

Mr. Arnold Jablon
November 26, 1991
Page 3

Finding: The following plant material shall be selected from the enclosed list and planted in addition to existing vegetation to provide a 15% forested cover.

Shrub and small tree list: 2 items - ball and burlap or 2 gallon container size

Tree list: 0 items - minimum 4 foot size

Trees are an important factor in improving water quality. The roots of trees greatly improve the infiltration rate of storm water and efficiently remove nitrogen from subsurface flows of groundwater. Trees also act as both a barrier and a sponge, blocking and absorbing eroding soils and the phosphorous associated with them.

5. Regulation: "The stormwater management system shall be designed so that:

- (1) Development will not cause downstream property, watercourses, channels or conduits to receive stormwater runoff at a higher rate than would have resulted from a ten year frequency storm if the land had remained in its predevelopment state;
- (2) Infiltration of water is maximized throughout the site, rather than directing flow to single discharge points; and
- (3) Storm drain discharge points are decentralized to simulate the predevelopment hydrologic regime.
- (4) There is sufficient storage capacity to achieve water quality goals of COMAR 14.15 and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state" <Baltimore County Code, Sec. 22-217(h)>.

Findings: If this structure is the same size as a previously permitted structure, then no additional impervious surfaces are proposed, and no additional stormwater management facilities shall be required.

Mr. Arnold Jablon
November 26, 1991
Page 4

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. If there are any questions, please contact Mr. David C. Flowers at 887-2904.

J. James Dieter
J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JUD:NSP:tjl

Attachment

cc: Mr. and Mrs. Weimer
4116 Beachwood Road
Baltimore, Maryland

WEIMER/MQBCA

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

DATE: January 12, 1995

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File: Case No. 92-187-A
JAMES W. WEIMER
District 15c7

As no further appeals have been taken regarding the subject case, we are closing the file and returning same to you herewith.

Attachment

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

January 29, 1992

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Zoning Variance
N/S Beachwood Road, 1400' W of the c/l of Lynhurst Road
(4116 Beachwood Road)
15th Election District, 7th Councilmanic District
JAMES W. WEIMER, ET UX - Petitioner
Case No. 92-187-A

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 31, 1991 by Thomas J. Gisriel and Michael Gisriel, Attorneys on behalf of the Protestants, Rondalyn Rakowski. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Zoning Commissioner

LES:cer

Enclosures

cc: Mr. & Mrs. James W. Weimer, 4116 Beachwood Road, Balto., MD 21222

Rondalyn Rakowski, 4116 Beachwood Road, Balto., MD 21222

Michael Gisriel and Thomas J. Gisriel
Gisriel & Gisriel, 210 E. Lexington Street, Balto., MD 21202

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

File

APPEAL

Petition for Zoning Variance
W/S Beachwood Road, 1400' W of the c/1 of Lynhurst Road
(4116 Beachwood Road, 1400' W of the c/1 of Lynhurst Road)
15th Election District - 7th Councilmanic District
JAMES W. WEIMER, ET UX - Petitioner
Case No. 92-187-A

Petition(s) for Zoning Variance
Description of Property
Certificate of Posting
Certificate of Publication
Entry of Appearance of People's Counsel (None submitted)
Zoning Plans Advisory Committee Comments
Director of Planning & Zoning Comments (Included with ZAC Comments)
Petitioner(s) and Protestant(s) Sign-In Sheets
Petitioner's Exhibits: 1. Plat to accompany petition
2. Photographs
3A - 3D. Letters of Support
Unmarked Exhibits: Two photograph albums
Deputy Zoning Commissioner's Order dated December 3, 1991 (Granted with restrictions)
Notice of Appeal received December 31, 1991 from Michael Gisriel and Thomas J. Gisriel, Attorneys for Rondalyn Rakowski
cc: Mr. & Mrs. James W. Weimer, 4116 Beachwood Road, Balto., MD 21222
Rondalyn Rakowski, 4118 Beachwood Road, Balto., MD 21222
Michael Gisriel and Thomas J. Gisriel
Gisriel & Gisriel, 210 E. Lexington Street, Balto., MD 21202
People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204
Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, Director of Zoning Administration
and Development Management
Public Services

3/11/92 - Following parties notified of hearing set for June 11, 1992 at 10:00 a.m.:

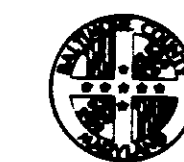
Mr. and Mrs. James W. Weimer
Michael Gisriel, Esquire and
Thomas J. Gisriel, Esquire
Ms. Rondalyn Rakowski
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon

JAMES W. WEIMER, ET UX

92-187-A

W/S Beachwood Rd., 1400' W of
c/1 Lynhurst Road (4116 Beachwood
Road)
15th Election District
7th Councilmanic District

Petition for Variance filed by Mr. and Mrs. James W. Weimer to permit an accessory structure in the front yard in lieu of the required rear yard.
Dec. 3, 1991 Order of the Deputy Zoning Commissioner GRANTING Petition for Variance with restrictions.
December 31 Notice of Appeal received from Michael Gisriel, Esquire and Thomas Gisriel, Esquire on behalf of Ms. Rondalyn Rakowski, Protestant/Appellant.
June 11, 1992 Hearing before the Board of Appeals.
October 21 Opinion and Order of the Board GRANTING requested variance.
November 20 Order for Appeal filed in the Circuit Court for Baltimore County by Thomas J. Gisriel, Esquire on behalf of Ms. Rondalyn Rakowski.
November 23 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Mr. Gisriel.
November 23 Certificate of Notice sent to interested parties.
December 17 Transcript of testimony filed; Record of Proceedings filed in the Circuit Court for Baltimore County.
August 11, 1993 Order of the Circuit Court for Baltimore County in which C.B. of A. is AFFIRMED. (Thomas J. Bollinger, J.)
September 7 Notice of Appeal filed in the Circuit Court by Thomas J. Gisriel, Esq. on behalf of Rondalyn Rakowski, Protestant/Appellant. /appealed August 11th decision of the Circuit Court to the Court of Special Appeals.
May 24, 1994 Order of the Court of Special Appeals; judgment REVERSED; case REMANDED to the CCT for REMAND to the Board of Appeals with direction that Petition for Variance be DENIED. (Remand Order from CCT to follow)
September 28, 1994 Remand Order issued by the Circuit Court for Baltimore County with direction that Petition for Variance be DENIED. (Thomas J. Bollinger, J.)



County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

March 22, 1994

Leslie D. Gradet, Clerk
Court of Special Appeals
Courts of Appeal Building
Annapolis, MD 21401-1699

Re: RAKOWSKI V. WEIMER
No. 1543, September Term, 1993

Dear Ms. Gradet:

The Board is in receipt of your notice dated March 18, 1994 regarding the subject case and addressed to Michael B. Sauer, Esquire, Room 49, Old Courthouse, Towson, MD 21204.

This letter is to advise you that Mr. Sauer, who is a member of the Board of Appeals, did not argue this matter at the Circuit Court level nor will he be participating in the argument scheduled in the Court of Special Appeals on May 9, 1994.

If there are any questions, please contact me at 887-3180.

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

September 26, 1994

Thomas J. Gisriel, Esquire
Hodes, Ullman, Pessin and Katz, P.A.
901 Dulany Valley Road, Suite 400
Towson, Maryland 21204-2600

Re: Case No. C-95-670
Case No. 92-187A
Case No. 92-CV10821
4116 Beachwood Road
15th Election District

Dear Mr. Gisriel:

First, my apology for not acting upon your inquiry on behalf of Rondalyn Lotz, formerly Rondalyn Rakowski in a more timely manner.

Inspector Craig McGraw has indeed verified that the subject property is in violation of the Court of Special Appeals of Maryland's decision in Rondalyn Rakowski V. James W. Weimer, et al. dated May 24, 1994.

However, the enforcement section has determined that the Circuit Court of Maryland, Baltimore County has yet to issue a Remand to the Board of Appeals with the direction that the Petition for Variance be denied.

Until this action has taken place, we cannot issue a citation imposing monetary fines of \$200 per day against the property owner.

The Board has informed me they will communicate with circuit court this week to assist us in moving forward with this case. However, you may wish to contact the Honorable Thomas J. Bollinger (887-2693) to speed things up.

If additional questions exist, please contact me at 887-3351.

Sincerely,

JAMES H. THOMPSON
Zoning Supervisor

JHT/hek

cc: Charlotte E. Radcliffe
Inspector Craig McGraw

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

October 6, 1994

Thomas J. Gisriel, Esquire
Hodes, Ullman, Pessin and Katz, P.A.
901 Dulany Valley Road, Suite 400
Towson, MD 21204-2600

RE: Case Nos. C-95-670
92-187A
92-CV10821
4116 Beachwood Road
15th Election District

Dear Mr. Gisriel:

Thank you for your most recent letter of October 3, 1994, along with the copy of Judge Bollinger's decision of September 28, 1994.

Once we receive the written decision from the Board of Appeals denying the Petition for Variance, 92-187-A, a citation will be issued.

The enforcement division understands your concern but it is essential that we withhold action pending the board's order.

Sincerely,

JAMES H. THOMPSON
Zoning Supervisor

JHT:ech

cc: Mrs. Charlotte E. Radcliffe
Board of Appeals

Inspector Craig McGraw



County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

January 12, 1995

Thomas J. Gisriel, Esquire
901 Dulany Valley Road, Suite 400
Towson, MD 21204

RE: Case No. 92-187-A
JAMES W. WEIMER, ET UX

Dear Mr. Gisriel:

As no further action has been taken regarding the subject matter since the October 13, 1994 Amended Order Pursuant to Order of the Circuit Court for Baltimore County, we have returned the Board's copy of the subject zoning file to the office of Zoning Administration and Development Management.

Anyone interested in this case can contact the Owen Stephens of Zoning Administration at 887-3391 upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified.

Sincerely,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

cc: James W. Weimer
Rondalyn Rakowski
People's Counsel for Baltimore County



Court of Special Appeals
Courts of Appeal Building
Annapolis, Md. 21401-1699

(410) 874-3646
WASHINGTON AREA (201) 261-2820

No. 1543, September Term, 1993

Rondalyn Rakowski
v.
James W. Weimer et al.

Attorneys for Appellant: GISRIEL ESQUIRE, THOMAS J.
Attorneys for Appellee: WEIMER, MR AND MRS JAMES W SAUER ESQUIRE, MICHAEL B

The Record in the captioned appeal was received & docketed on 12/06/93. The brief of the APPELLANT is to be filed with the office of the Clerk on or before 1/17/94. (Rule 8-502 (a)(1)).

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of appellant brief (Rule 8-502(a)(2)).

This appeal has been set for argument before this Court during the week of May 2, 3, 4, 5, 6, 9, 10, 11 and 12, 1994.

IF, DUE TO A CURRENTLY SCHEDULED COURT APPEARANCE OR OTHER EXTRAORDINARY CAUSE, YOU WILL BE UNABLE TO APPEAR ON ONE OR MORE OF THESE DATES, YOU MUST INFORM THE CLERK WITHIN TEN DAYS AFTER THE DATE OF THIS NOTICE. OTHERWISE, THE DATE SELECTED FOR ARGUMENT WILL NOT BE CHANGED.

Stipulations for extensions of time within which to file briefs will not be granted where the request will delay argument (Rule 8-502(b)).

Counsel is likewise notified to advise the office of the Clerk (Pursuant to Rule 8-523) of intent to submit on brief at the time of filing his brief. No submission on brief will be accepted within ten (10) days prior to the date of argument without specially obtained permission of the Court.

Leslie D. Gradet
LESLIE D. GRADET

DEC - 6 1993

50-2 CLERK OF THE COURT
OF SPECIAL APPEALS
ANAPOLIS, MD 21401-1699

Maryland Policy Service
1-800-726-2288
TYVOC

ORIGINAL

IN THE MATTER OF
JAMES W. WEIMER, et ux
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
CASE No. 92-187-A
June 11, 1992

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, Towson, Maryland 21204 at 10 o'clock a.m., June 11, 1992.

Reported by:
C.E. Peatt

BOARD OF APPEALS

TO WHOM IT MAY CONCERN:

The 12' by 14' pavilion on the waterfront property at:
4116 Beachwood Rd.
Baltimore, Md. 21222

has been on the site since we/I moved to the community. We have had no complaint with the same.

I have lived at this address 4114 Beachwood Rd. for 15 years 8-16-91 William J. Lingo

Mr. James W. Weimer
Notary:
William J. Lingo
4114 Beachwood Rd.
Oct. 1/92

PETITIONER'S
EXHIBIT 3A → D

TO WHOM IT MAY CONCERN:

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4116 Beachwood Rd.
Baltimore, Md. 21222

has been on the site since we/I moved to the community. We have had no complaint with the same.

Mike Ellen don't have complaints on this screen house. 13 yrs. resident at 4112 Beachwood Rd. 3016 MD. 21222

Mr. James W. Weimer
Notary:
William J. Lingo
4114 Beachwood Rd.
Oct. 1/92

TO WHOM IT MAY CONCERN:

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4116 Beachwood Rd.
Baltimore, Md. 21222

has been on the site since we/I moved to the community. We have had no complaint with the same.

4117 Beachwood Rd
Mr. Robert L. Shriver
11-23-91

I have lived here for 10 yrs and the pavilion was on that lot. There was no complaint for that one and the new one was put in the same place

Mr. James W. Weimer
Notary:
William J. Lingo
4114 Beachwood Rd.
Oct. 1/92

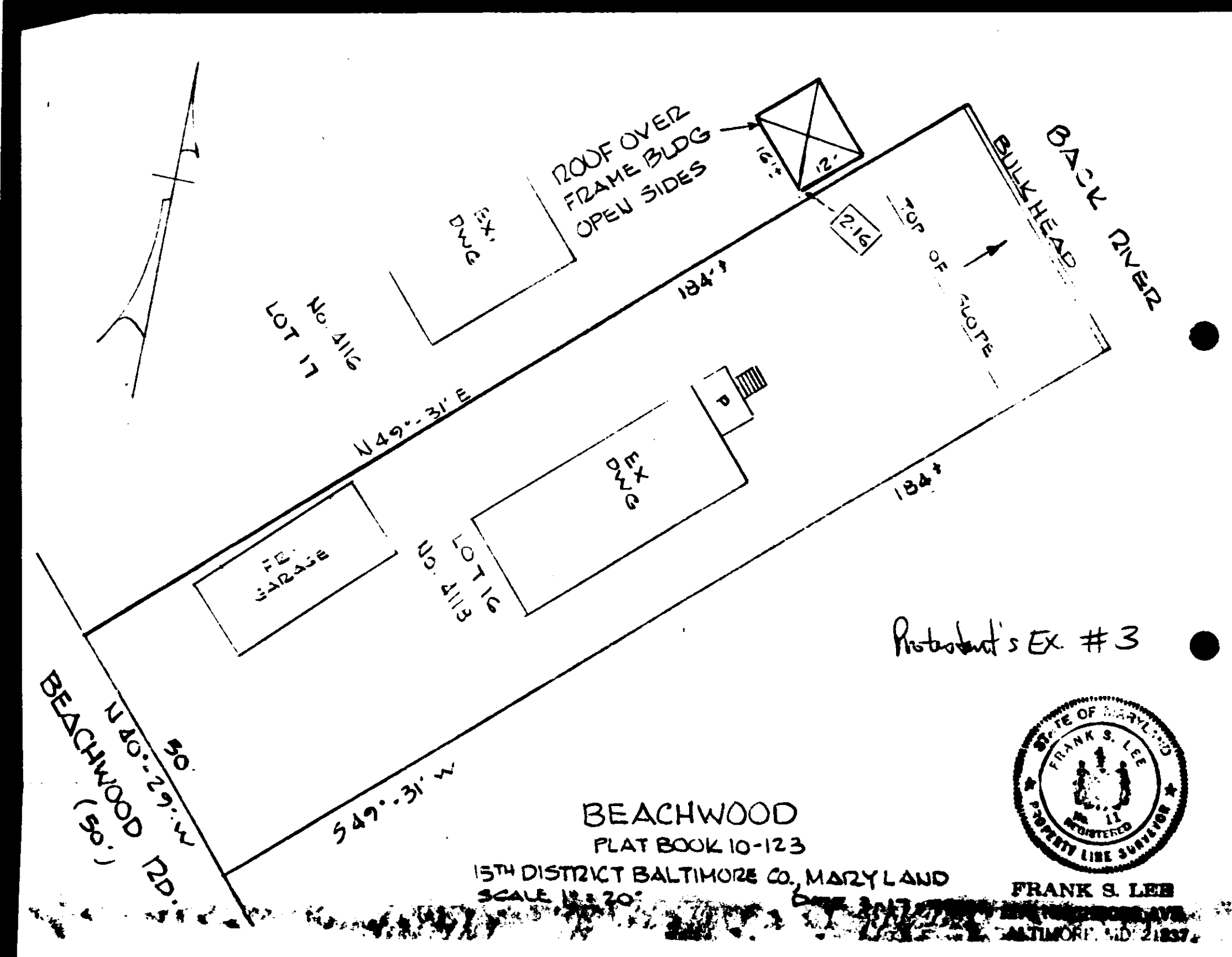
TO WHOM IT MAY CONCERN:

The 12' by 14' pavilion on the waterfront property at:
4116 Beachwood Rd.
Baltimore, Md. 21222

has been on the site since we/I moved to the community. We have had no complaint with the same.

4117 Beachwood Rd 21222
Mr. Richard Hand 11/23/91
Mrs. Sandra Hand
I have been here for 20 yrs and Pavilion was on that lot. And there was no complaint.

Mr. James W. Weimer
Notary:
William J. Lingo
4114 Beachwood Rd.
Oct. 1/92



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
TOWSON, MARYLAND 21204

BUILDING PERMIT

PERMIT #: B114738 CONTROL #: MR DIST: 15 PREC: 24
DATE ISSUED: 01/07/92 TAX ACCOUNT #: 1506572130 CLASS: 34

PLANS: CONST 0 PLOT 4 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 4116 BEACHWOOD RD
SUBDIVISION: BEACHWOOD

OWNERS INFORMATION
NAME: WEIMER, JAMES AND MARCELLA
ADDR: 4116 BEACHWOOD RD 21222

TEHANT:
CONTR: OWNER
ENGR:
SELL:
WORK:

REPLACE SCREEN ROOM IN FRONT YARD OF S.F.D. (WATERFRONT) 14' X 12' X 12' = 168SF IN CRITICAL AREA CASE 92-187-A, CORRECTION NOTICE C92-610 DUNDALK, M.A.G.

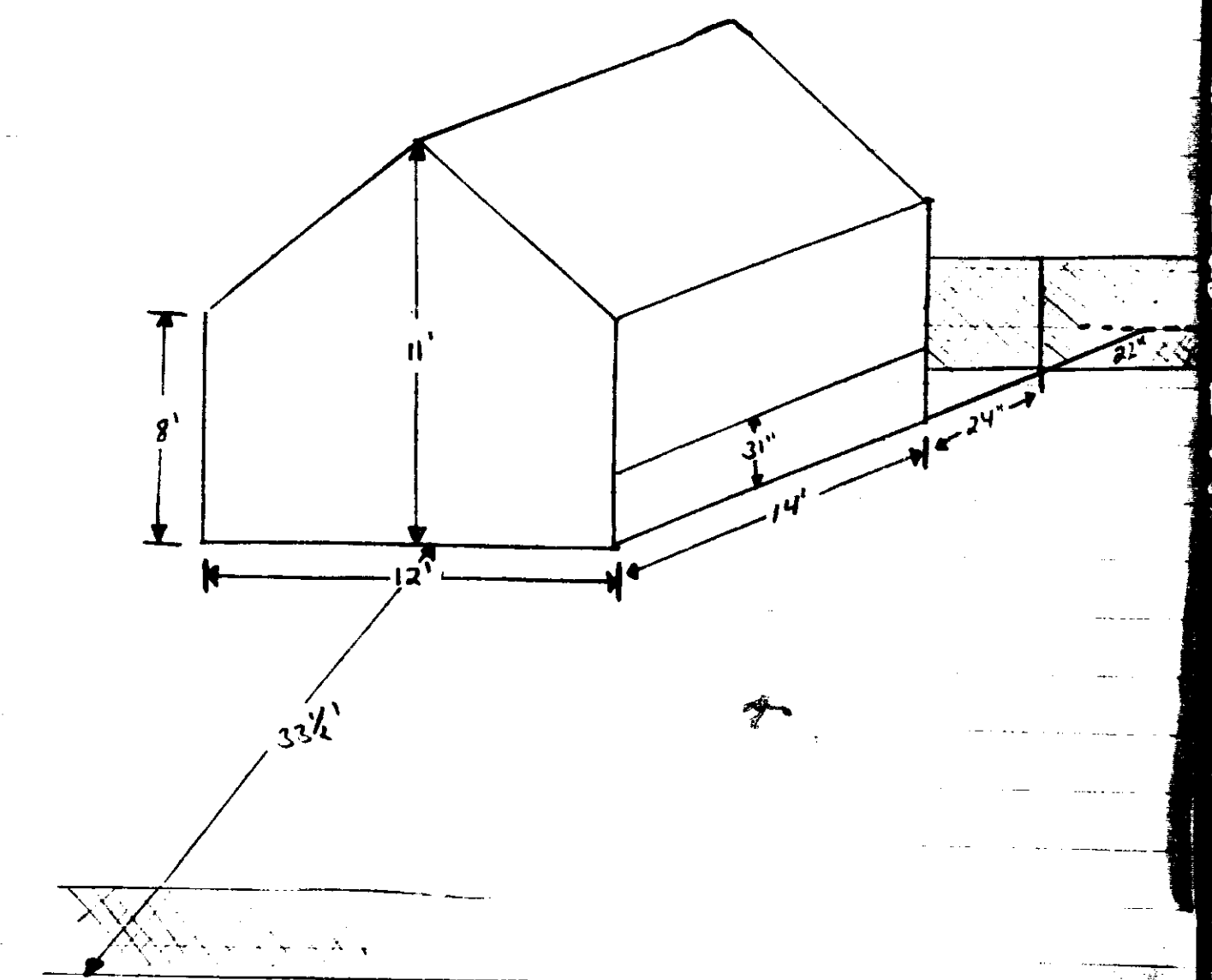
BLDG. CODE: 1 AND 2 FAM. CODE
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED

ESTIMATED \$ PROMISED USE: S.F.D./SCREEN ROOM 2,300.00 EXISTING USE: S.F.D.

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION
USE: OTHER - RESIDENTIAL
FOUNDATION: BASEMENT
SEWAGE: PUBLIC EXIST

LOT SIZE AND SETBACKS
SIZE: 850/050X180/175
FRONT STREET: 14'
SIDE STREET: 33'
FRONT SETB: 35
SIDE SETB: 33/3
SIDE STR SETB: 33/3
REAR SETB: NC

THIS PERMIT EXPIRES ONE YEAR FROM DATE OF ISSUE



4116 Beachwood Rd. - Screen House (Pavilion)
Drawn by - Craig Thibaut
Dec. 4, 1992